

1500

THE
SOLICITOR'S
Compleat Guide
In the PRACTICE of the
HIGH COURT of CHANCERY.

SHEWING

The whole modern Practice of the Court, from the Issuing of the *Subpœna* to the final *Decree*, arranged in an intire new, familiar, concise, and comprehensive Manner, so as to be a perfect Assistant to the young Clerk, as well as an Aid to the old Practitioner; Illustrated with apt Points determined on each particular Head, selected from the best Authorities.

To which is added

Forms of all necessary Precedents that may be wanted by a Practitioner in the Course of a Suit;

AND ALSO

A compleat Table of Fees due to the particular Officers of the Court, as settled by an Order of the 28th November 1743, Temp. Lord Hardwicke.

BY A SOLICITOR OF THE COURT.

VOLUME II.

LONDON:

Printed by W. STRAHAN and M. WOODFALL, Law-Printers to the King's Most Excellent Majesty;
For J. WILLIAMS, M. FOLINGSBY, and G. KEARSLY, in Fleet-street; W. FLEXNEY, in Holborn; J. WHITE, in Lincoln's-Inn-Fields; G. ROBINSON, in Pater-Noster Row; and E. BROOKE, in Bell-Yard.

M DCC LXXVI.

[Price SEVEN SHILLINGS Bound.]

ADVERTISEMENT.

THE BRITISH MUSEUM, published
and sold by the Trustees, at the
British Museum, in the Strand, London.
The Trustees of the British Museum,
have the pleasure to announce, that
they have received from the
Government, a large quantity of
manuscripts, and other valuable
materials, which they have
deposited in the Museum, and
which they are now offering for
sale, at a public sale, to be
held at the Museum, on the
1st of January, 1841.



A
OVER
THE
SOLICITOR'S
COMPLEAT GUIDE

In the PRACTICE of the
HIGH COURT of CHANCERY.

Directions for Drawing and Compleating Interrogatories.

THE interrogatories are to consist of proper and apt questions to the point or points in issue between the parties; they are drawn and settled by counsel, who signs the same, and are ingrossed on a double 12d. piece of stamped parchment. Where witnesses are to be examined in a town-cause, the solicitor leaves the interrogatories at the examiner's office, with his examiner; who settles with him the time when he is to bring or send a witness to be sworn and examined.

PRECEDENTS of INTERROGATORIES.

Interrogatories to be administered to witnesses to be produced, sworn and examined, in a certain cause depending in the high court of Chancery, between J. L. and M. T. complainants, and R. T. S. S. and F. K. defendants; on the part and behalf of the complainants, as follows.

To prove a Deed between the Parties.

DO you know the parties, complainants and First inter-
defendants in the title of these interrogatories, rogatory.
named;

The Modern Practice of the

named; or any, and which of them? How long have you known them; or any, and which of them, respectively? Declare the truth, and your knowledge herein.

Second in-
terrogatory.

LOOK upon the deed, or writing, now produced and shewn to you at this the time of your examination, marked with the letter *A*. and purporting to be, &c. Was such deed, or writing, sealed and delivered in your presence, and by whom? Were you a subscribing witness to the sealing and delivery thereof; and is your name, indorsed and set as a witness thereto, of your own hand-writing? And do you know the hand-writing of the other witness or witnesses thereto? And is, or are the name of each witness or witnesses, of the proper hand-writing of such witness or witnesses? And did you see them, or any, and which of them, set any, and which of their names, as subscribing witness or witnesses thereunto? Set forth the particulars at large, according to the best of your knowledge, remembrance, and belief, and the truth declare.

Last in'er-
rogatory.

Lastly, DO you know of any other matter or thing; or have you heard, or can you say any thing touching the matters in question in this case, that may tend to the benefit and advantage of the complainant in this cause, besides what you have been interrogated unto? Declare the same fully and at large, as if you had been particularly interrogated thereon.

J. M.

Note: The following interrogatories have not their titles, nor the introductory or conclusive interrogatory, which, when used, must be inserted as the foregoing.

A Sea-

A Seaman died on board intestate; a Bill brought by an only Sister against his Widow and the Agents, for her distributive Share.

DID you know *A. B.* late on board his Majesty's ship of war, called, &c. *X. Y.* Esq; commander, now deceased, and in the pleadings in this cause named, in his life-time, or not? If yea—How long did you so know him before his decease, and when and where did he die? And was you for any, and what time, on board any, and what ship, with him, and in what capacity; and intimately, or otherwise, and how acquainted with him and his family, or with any, and which of them, or not? Set forth according to the best of your knowledge, remembrance, and belief herein, with the reasons and circumstances thereof, fully and at large.

DID you know the said *A. B.* in the preceding interrogatory named, and his father and mother, brother and sister, brothers and sisters, and his family, kindred, and relations, or any, and which of them, or not? If yea—How long did you know, and how and by what means in particular came you to know them, or any, and which of them, and where did they severally live and reside? In what capacity, and how did he the said *A. B.* support himself during your knowledge of him? And have you, or have you not, heard the said *A. B.* in his life-time, say or declare any thing, and what, touching the relations he had; and what person or persons was or were his nearest relation, or next of kin to him? If yea—Set forth what the said *A. B.* so said or declared, and what person or persons was or were his next relation or of kin to him? Declare all you know, have heard, and do believe, touching the several matters inquired of you by this interrogatory.

The

The Seaman had a Wife, but no Issue.

DO you know, or have you been credibly informed of the time and place of the birth of the said *A. B.* and also the time of his marriage, and of the time of his death, or of the time of any, or which of them, or not? If yea—When and where was the said *A. B.* born, and at what time, and with whom did he marry? Were there or are there any issue of that marriage, or not? Declare all you know, have heard, and do believe, touching the matter inquired of you by this interrogatory.

That the Intestate left no Issue, or next of Kin, but an only Sister.

DO you, or do you not know, or have you, or have you not been credibly informed, and how and by whom, that the said *A. B.* had, or left at his death, any and what issue; or any father or mother, brother or sister, brothers or sisters, or brothers or sisters-children, uncle or aunt, uncles or aunts? And if any, whom, by name particularly? Was the said *A. B.* in any manner, and how, related to the complainant *C. D.* or not? If yea—Set forth in particular their degree of kindred, the one to the other, and how made out. Do you know of any, and what person or persons, who is or are nearer, or as near of kin, and how, to the said *A. B.* as the said complainant *C. D.* or not? Set forth according to the best of your knowledge, remembrance and belief, with the reasons and circumstances to induce your belief, fully and at large declare, &c.

Cona

Concerning the Intestate's own Declaration.

DID the said *A. B.* in his life-time, at any time, and when, and on what occasion, acknowledge or declare, that he had a sister named *R. T.* and say any thing, and what, touching or concerning such *sister*, and his family, or not? And did the said *A. B.* at any time, and on what occasion, declare that any, and what person by name, was his nearest relation, or next of kin, or not? Set forth according to the best of your knowledge, remembrance and belief herein, with the reasons and circumstances thereof, fully and at large.

That the Complainant was the only Sister.

DO you know, or have you any, and what reasons to believe, that the complainant *C. D.* was the sister, and the only, or one of the next of kin of the said *A. B.* or not? If yea—Set forth the reasons and grounds of such your knowledge and belief herein, fully and at large.

To prove the Marriage of the Complainant from the Registry.

LOOK upon the paper-writing now produced, and shewn to you at this the time of your examination, and marked with the letter *A.* Did you compare and examine the same with the register of any, and what parish or place, book or books, entry or entries, or not? If yea—Does the same contain a true copy of such register, book or books, entry or entries, with which you so examined or compared the same, or not? Declare.

For

For a Contempt in not answering the Plaintiff's Bill.

1. Did you, and when, appear to the plaintiff's bill exhibited in this court against you? Did you appear in pursuance of a *subpœna* formerly served on you for that purpose; and whether have you seen, perused or had a copy of the said bill? Do you know the contents thereof? How came you to know or understand the contents thereof; and when did you appear, and take a copy of the said bill, or had the sight of such copy or understood the contents thereof? Declare, &c.

2. Whether did you put in your answer to the said bill within the time limited for doing thereof, or have you yet put in your answer thereunto? Declare.

To prove Copies of Records or Decrees.

IS or are any, and which, of the parchment or paper writing or writings, now produced and shewn unto you at this the time of your examination, marked respectively with the letters *A*, *B*, *C*, *D*, &c. a true copy or copies, of any and what record or records, decree or decrees, or any other and what proceedings, in any and what court or courts? And did you, or did you not, examine the said copy or copies, or any and which of them, with the original record, decree or decrees, or how or with what original paper, parchment, book or books, entry or entries; and with whom and when did you examine the same, and where is or are such original record or records, decree or decrees, or other proceedings now remaining, as you know or believe? Declare.

LOOK

LOOK upon the several parchments and paper deeds, writings or agreements now produced and shewn to you, at this the time of your examination, and marked with the respective letters *A, B, C, D, &c.* Give an account where and when you found the same, or any and which of them, and in whose custody or power; and whether the same was found and discovered by you among any deeds and evidences, of any and what person or persons? And did such deeds and evidences, and the said parchment and paper deeds, writings or agreements, or any and which of them, upon your finding the same, appear to be carefully preserved in any closet, bureau, box or boxes, with or without locks and keys to the same? Set forth a full and particular account of the finding of the said produced parchment and paper deeds, writings or agreements, and declare what you know touching the matters in this interrogatory inquired of.

As to the Circumstances of the Deceased.

DID you know *A. B.* late of the parish of, &c. and since deceased, and for how long did you know him before his decease; and when, at, or about what time, or how long ago did he die, as you know, or for any and what reason did believe? And what circumstances or condition of life was he, or did appear to be in, for any time, and how long, next before his decease? And was he, or did he appear for any time, and how long before his death, able or unable to pay his just debts, as you know, or for any and what reason believe? And whether or no did he for any time, and how long time before his decease, use, exercise or follow any and what trade, business or employment; or how or in what manner did he get his maintenance or
live-

For a Contempt in not answering the Plaintiff's Bill.

1. Did you, and when, appear to the plaintiff's bill exhibited in this court against you? Did you appear in pursuance of a *subpœna* formerly served on you for that purpose; and whether have you seen, perused or had a copy of the said bill? Do you know the contents thereof? How came you to know or understand the contents thereof; and when did you appear, and take a copy of the said bill, or had the sight of such copy or understood the contents thereof? Declare, &c.

2. Whether did you put in your answer to the said bill within the time limited for doing thereof, or have you yet put in your answer thereunto? Declare.

To prove Copies of Records or Decrees.

I S or are any, and which, of the parchment or paper writing or writings, now produced and shewn unto you at this the time of your examination, marked respectively with the letters *A*, *B*, *C*, *D*, &c. a true copy or copies, of any and what record or records, decree or decrees, or any other and what proceedings, in any and what court or courts? And did you, or did you not, examine the said copy or copies, or any and which of them, with the original record, decree or decrees, or how or with what original paper, parchment, book or books, entry or entries; and with whom and when did you examine the same, and where is or are such original record or records, decree or decrees, or other proceedings now remaining, as you know or believe? Declare.

LOOK

LOOK upon the several parchments and paper deeds, writings or agreements now produced and shewn to you, at this the time of your examination, and marked with the respective letters *A, B, C, D, &c.* Give an account where and when you found the same, or any and which of them, and in whose custody or power; and whether the same was found and discovered by you among any deeds and evidences, of any and what person or persons? And did such deeds and evidences, and the said parchment and paper deeds, writings or agreements, or any and which of them, upon your finding the same, appear to be carefully preserved in any closet, bureau, box or boxes, with or without locks and keys to the same? Set forth a full and particular account of the finding of the said produced parchment and paper deeds, writings or agreements, and declare what you know touching the matters in this interrogatory inquired of.

As to the Circumstances of the Deceased.

DID you know *A. B.* late of the parish of, *&c.* and since deceased, and for how long did you know him before his decease; and when, at, or about what time, or how long ago did he die, as you know, or for any and what reason did believe? And what circumstances or condition of life was he, or did appear to be in, for any time, and how long, next before his decease? And was he, or did he appear for any time, and how long before his death, able or unable to pay his just debts, as you know, or for any and what reason believe? And whether or no did he for any time, and how long time before his decease, use, exercise or follow any and what trade, business or employment; or how or in what manner did he get his maintenance or live.

The Modern Practice of the

livelihood, as you know, or for any and what reason believe? And where did he usually live and reside for any time, and how long before his death, as you know, or for any and what reason believe? Declare the whole truth herein, with all the circumstances thereof, and the whole of your knowledge and belief relating thereto, together with the grounds and reasons of such your knowledge and belief.

To prove a Bond and Warrant of Attorney.

LOOK upon the bond and warrant of attorney, or writing, now produced and shewn to you, at this the time of your examination, marked respectively *A, B, &c.* Whether, or no, were the said produced writings, or was either, and which of them, ever, and when, signed, sealed, and delivered, or in any and what manner executed, by any and what person or persons, in your sight or presence, or in the presence of any and what person or persons, as you know, or for any and what reasons believe? And whether or no is your name or mark set or subscribed, or indorsed to or upon the said produced writings, or either and which of them, as a witness to the signing, sealing, delivery, or execution thereof, or of either and which of them, by any and what person or persons, or as a witness to any and what receipt or receipts, or writing or writings thereon, or on either and which of them indorsed or written? If yea—Is your name or mark so set or subscribed, of your own proper hand-writing, and of whose respective proper hand-writing; or is any, and what name or names, a mark or marks, of any and what person or persons, set, subscribed or indorsed to or upon the said produced writings, or either and which of them, as witness to the signing, sealing and delivery, or execution thereof, or of either

ther and which of them, by any and what person or persons, or as a witness or witnesses to any and what receipt or receipts, or writing or writings therein, or on either and which of them indorsed or written, as you know, or for any and what reason believe? And whether or no such witnesses, are or is, any or either, and which of them, living or dead, as you know, or for any and what reason believe? Declare.

To prove Money paid in Part of Interest on a Bond.

DID, or did not, the complainant ever, and when, and of whom, and in what manner, receive any, and what sum or sums of money, and to what amount, for or in respect, or in part, or on account of the principal or interest due on the bond and warrant of attorney in the next foregoing interrogatory mentioned, and now produced and shewn to you at this your examination, marked respectively *A.* and *B.* as you know, or for any and what reason believe? Or did the same complainant ever, and when, in any and what manner, receive of and from the said *C. D.* or from any other, and what person or persons, by his order, or on his account, any and what sum or sums of money, and to what amount, for or upon any other and what account, or how otherwise, as you know, or for any and what reason believe? Declare the whole truth herein, with all the circumstances thereof, and the whole of your knowledge and belief relating thereto, together with the grounds and reasons of such your knowledge and belief.

To prove a Will by a subscribing Witness.

WHETHER or no did the said *A. B.* deceased, in the foregoing interrogatories named,
ever,

ever, and when and where, in your sight or presence, or in the presence of any and what other person or persons, sign, seal, publish or declare his last will and testament in writing, or any and what writing as or for, or purporting to be his last will and testament, and whether or no is the will or writing now produced and shewn to you at this the time of your examination, marked C, the same will the said *A. B.* so signed, sealed, published or executed, as and for his last will and testament, as you know, or for any and what reason believe? And whether or no did you, or any other, and what person or persons in your sight or presence, at any time, and when, either when the said *A. B.* had so signed, sealed, published or executed his said will, or at any other time, and when, subscribe or set your's and their, or any or which of their respective names or marks as witnesses thereto? And whether or no did you and they, or any and which of them, so subscribe or set your and their, or any and which of their respective names or marks thereto, in the presence of the said *A. B.* or how otherwise? And whether or no is your name or mark, subscribed or set as a witness thereto, of your own proper hand-writing; and of whose respective proper hand-writing are and is any and what name or names, mark or marks of any and what person and persons, set or subscribed to or upon the said produced will or writing, as the party executing the same, or as witnesses to the execution thereof, by any and what person, as you know, or for any and what reason believe? And whether or no are such witnesses, or are or is any and which of them living or dead, as you know, or for any and what reason believe? Declare.

To prove the Testator of sound Mind, &c.

WHETHER or no was the said *A. B.* deceased, in the foregoing interrogatories named,
at

at the time of his signing, sealing, publishing or executing the will or writing marked C. in the next foregoing interrogatory mentioned, and now produced and shewn to you at this your examination, of good and sufficient sound mind, memory and understanding for making his will? and was the said *A. B.* then capable, or was he then in any and in what manner incapable of understanding or disposing of his estate or effects, as you know, or for any and what reason believe? Declare.

To prove a Difference submitted to Arbitration, and an Award made thereon.

DO you, or not, know of any and what dispute or difference that was subsisting or depending between the complainant and the defendant touching the complainant's paying the sum of———, or any other and what sum of money, to *C. D.* in the pleadings in this cause named? If yea—When, or about what time, was such dispute or difference, and what was the nature thereof? Did or did not the said complainant, and the said defendant, and when, agree to refer such dispute or difference between them to the arbitration and determination of any, and what person or persons? And did such person or persons undertake such reference or not, fully hear the said complainant and the defendant touching such dispute or difference? If yea—When and where did such persons hear them, and did such persons as were so appointed or nominated referees or arbitrators, make any and what award, or give any and what opinion, touching the matters so referred to them? And was or was not the defendant made acquainted with such arbitration or opinion, and did he seem satisfied or dissatisfied therewith? And what profession or employment did such person

The Modern Practice of the

person or persons to whom such difference was then referred, then follow, and how long had such persons followed and been of such profession or business? Declare, &c.

To prove the Plaintiff took the Defendant's Word for the Money instead of a Note.

DID or did not the defendant, and when, offer or promise to pay the complainant any, and what sum of money, which such arbitrators or referees had awarded to be paid, or were of opinion ought to have been paid by the defendant to the complainant? Or did or did not the said defendant then offer to give the complainant his promissory note for payment of such money? And did or did not the complainant then say, he would take the word or promise of the defendant for payment of such money? And did or did not the complainant for that, or for any other and what reason, decline or refuse to take the said defendant's note for payment of such money? Declare.

The Intestate dying, C. D. married his Widow, and possessed his Effects.

DID you or did you not know or was acquainted with A. B. of, &c. the complainant's late father, deceased, and C. D. late of, &c. in the pleadings in this cause severally named, in their respective life-time? If yea—How long did you so know them, and how and by what means did you become acquainted with them respectively, and when or about what time did they severally die? Declare.

Whether

Whether the Intestate followed the Business, and the Value of his Goods and Stock, and if fairly appraised, &c.

DID the said *A. B.* in his life-time, follow the trade or business of a——— and a dealer in———, or either and which of them, or any other, and what trade or business, and where, or in what place or places? Was the said *A. B.* at the time of his death possessed of any household goods, stock in the said trades, or either and which of them, and of any other and what goods, chattels, personal estate, or effects, yea, or no? If yea—Of what did the same consist, and what was or were the value of the same respectively? Do you know or not, whether any inventory, valuation, or appraisement, was, or were, at any time, and when, and by whom made or taken, of such goods, chattels, personal estate, and effects? And doth such inventory, or not, contain a full, true, and particular account of the same, together with the natures, kinds, quantities, qualities, true and utmost value of the same and every part thereof, or what omission, or omissions, was or were made therein, and by whom, and for what cause or reason was or were the same so undervalued, or not inserted therein? And was or were the person or persons, who so respectively valued or appraised the same, or not deemed, looked upon, or esteemed to be men of skill and judgment in that business? And who by name hath, since the death of the said *A. B.* possessed such household goods, furniture, several stocks in trade, chattels and effects, every or any part thereof, or what is become of the same, as you know, or have heard, or for any reason, and what reason, believe? Declare all you know, have heard, or do believe, touching the matters inquired of you by this interrogatory fully and

O

at

The Modern Practice of the
at large, together with the reasons for such your
knowledge and belief.

Whether possessed of any Stock.

W A S the said *A. B.* in the preceding interrogatory named, or not, possessed of any and what stock in the public funds, or any, and which of them, as you know, have heard, or for any and what reason believe, yea or no? If yea—What stock, or stocks, to what value or amount, and in what particular company, or companies was the said *A. B.* possessed of such stock, and what is become of the same? Declare all you know, have heard or do believe, touching or in any wise concerning the matters inquired of you by this interrogatory; and when, of and from whom, you so heard the same, together with the cause and reason of such your knowledge and belief, fully and at large.

To prove several Debts due to the Intestate, and upon what Security.

D O you know of any debt or debts, sum or sums of money, due, owing or payable to the said *A. B.* at the time of his death, by or from any person or persons, and whom by name, upon any mortgage, bond, note, or other security, or securities; and in particular, of and from *F. G. H. I. K.* or any, and which of them? If yea—What debt or debts, sum or sums of money, was or were so due, owing and payable to the said *A. B.* at such the time of his death, by or from any such person or persons in particular; and whom by name, and where now doth, or do, such several person or persons live and reside, or last lived and resided, and may be found or heard of, upon any and what mortgages, bonds, notes, or any other and what security?

And which, particularly, of such debt or debts, have or hath been, at any time, and when received, got in, or compounded for? And for how much money, or other thing particularly, and which particularly now remain outstanding, and upon any and what security or securities? Or did the said defendants, or either, and which of them, at any time and when, take or pursue any, and what, legal or other method, for the recovery of the same, or any and which of them, and if not, why and for what cause or reason did they neglect so to do? Declare all you know, have heard or do believe, touching or in any wise concerning all or any of the matters inquired of you by this interrogatory, fully and at large, together with the cause and reason of such your knowledge and belief.

*To prove the Time of the Defendant's Marriage,
and Money received by the second Husband.*

DO you or not, know at or about what time the defendants intermarried together? If yea—When, or about what time did they so intermarry? Did the said *E. F.* (*the second husband*) or any other person or persons, and whom, by name, by his order, or for his use, after such intermarriage with the other defendant, possess himself of any and what part of the personal estate of the said *A. B.* and to what value or amount? Declare all you know, have heard, or do believe, touching or in any wise concerning the several matters inquired of you by this interrogatory, fully and at large, together with the cause and reason of such your knowledge and belief.

The Modern Practice of the

To prove Money laid out on the Son during his Apprenticeship.

DO you, or do you not know, or can you, or not, set forth what sum or sums of money, the defendants, or either of them, did expend and lay out in cloaths, and other necessary things, for the said Y. Z. during the time of his apprenticeship? If yea—What sum, or sums of money did the said defendants respectively lay out, or expend, or reasonably deserve to have for such cloaths and necessary things, so by them found and provided for the said Y. Z. during such the time of his said apprenticeship, as aforesaid, as you know, have heard, or do believe?

To prove Money laid out in the Purchase of Messuages, Lands and Rents, according to Deed or Agreement.

WHETHER or no did the said A. B. in the foregoing interrogatories named, or did you, or any other person or persons, and whom by name, as trustee or trustees, agent or agents, for him, or how otherwise for or on his behalf, ever and when, in any and what manner, purchase of any person or persons, and whom by name respectively, any and what messuages, lands, tenements, rents, hereditaments, or any other, and what estate or estates? If yea—Where was or were, is or are, such messuages, lands, tenements, rents, hereditaments, or estate, or estates, respectively situated; and what consideration or considerations was or were paid or given, or agreed to be paid or given; and when, and by whom, and to whom, for such purchases respectively? Was, or were, any and what sums of money, and to what amount, due or owing from, and unpaid by the said A. B. at the time of his death,

death, to any person or persons, and whom, for or on account of all, or any, and what part, of the purchase money, or other and what consideration paid or given, or agreed to be paid or given, for all or any, and which of the said messuages, lands, tenements, rents and hereditaments, or other estate or estates, or any, and what part thereof, so purchased by or for the said *A. B.*? Hath, or have, such sum or sums of money, or any and what part thereof, and to what amount, been at any time or times, and when, since the death of the said *A. B.* paid, and by whom; or doth, or do, all or any, and what part of such sum or sums of money, and how much in the whole now remain due, owing, or unpaid, and to whom? Declare, &c.

The purchased Premises subject to a Mortgage and Ejectment brought for the Recovery of the Possession.

WHETHER or not, do you know all, or any, and which of the messuages or tenements, lands, hereditaments, and premises, in the pleadings in this cause mentioned to have been purchased by the complainant's son *Y. Z.* in the pleadings in this cause named, and which of them? And can you set forth, whether the same, or any and which of them were, or was, at that time, subject to any and what mortgage, and when, and to whom by name made, and for what sum, and whether any and for what application, or applications, were, or was, at any time or times, and when, and in what manner, and by, and to whom made, for payment of the money due on the said mortgage, or any and what part thereof, and what was the end or result of such application, or applications, or any and which of them; and do you know, or can set forth, whether any and what action, or actions, in ejectment, was

The Modern Practice of the

or were, at any time, and when, after the making of such purchase, commenced, and by and against whom, for the recovery of the possession of the said premisses, or any and what part thereof, and what proceedings were held therein; and by whose means, or for or upon what reason or account such action or actions, was or were commenced and prosecuted; and whether the same might have been prevented, or not, and by what means? Set forth the particulars at large, according to the best of your knowledge, remembrance, information, and belief, with the reasons for such your belief.

An Assignment of such Mortgage executed, &c.

WHETHER or not was you at any time, and when, retained or employed, and by whom, and for and on whose behalf, to procure any and what indenture, or indentures, or other writing or writings, touching, or in any wise, and how, concerning the said premisses, in the second interrogatory mentioned, or any and which of them, to be signed, or otherwise, and how executed, and by whom? And did you prove the same, and when, to be accordingly so signed, or executed, and by whom; and was, or were any, and what alteration, or alterations, made therein, or in any, or either, and which of them, and by whom previous to the signing or execution thereof, or not; and why, or for what reason, and at whose instance, and by or with the orders, consent, or privity of all, or any, and which of the parties thereunto? Was or were such alteration or alterations, or any and what consideration then paid, or given, to the person or persons so signing or executing the same, or not, and when and by whom? Declare what you know, have heard, or believe, touching

touching the matters inquired after by this interrogatory, with the reasons for such your belief, at large.

To prove what the several Messuages were yearly worth, to be let at ; and whether out of Repair, and what it would cost Repairing.

DO you know a messuage, or tenement, in, &c. a messuage or tenement in, &c. and a messuage or tenement in, &c. or any, and which of the said messuages or tenement? Did you know the same, or any and which of them, in the years 17 , and 17 , or in either and which of these years? Are you a judge of the value of houses in —, or conversant therein? If yea—What was the yearly value of the said three messuages, or tenements, respectively, or what yearly rent were the same, or any and which of them, respectively worth, to be let upon leases to solvent tenants in the said years 17 , and 17 , or in either of the said years? What was the state and condition of the said houses, or of any and which of them, in good tenantable repair, fit for habitation? And was, or were any, and which, of them, in good tenantable repair, fit for habitation? And was or were any, and which of them, uninhabitable or empty; and if uninhabitable or empty, why or for what cause or reason? And what sum or sums of money will it cost, or be worth, or would it cost or be worth, in the said year 17 , to put the said houses, messuages or tenements, and every or any of them, in tenantable repair, fit for habitation? Declare all you know, have heard, remember, or believe, touching the several matters inquired after by this interrogatory, with the causes and reasons thereof, at large.

To prove Money laid out for Meat, &c.

DID, or did not the said *A. B.* in his life time, and the said *C. D.* since his decease, or from what time to what time, find and provide for the said complainant (or defendant) meat, drink, washing, lodging, and any other, and what necessaries? And what did they, the said *A. B.* and *C. D.* respectively desire to have for such, the board, lodging, maintenance, and necessaries, so found and provided by them, respectively, for the said complainant, (or defendant) by the year, month, or week, to the best of your judgment and belief? And did, or did not, the said *A. B.* in his life time, and the said *C. D.* since his decease, respectively pay, lay out, and expend any, and what sum or sums of money, for and on account of the said complainant (or defendant)? If yea—When, or about what time or times, and to whom, and for what purpose did they so respectively pay, lay out, and expend the same? Declare all you know, remember, or do believe, touching the matters inquired after by this interrogatory, and how or by what means you are enabled to depose thereto, with your reasons therein, fully and at large.

To a———Schedule.

LOOK upon the paper-writing, now produced and shewn unto you, at this the time of your examination, marked with the letter *A.* purporting to be a copy of the schedule to the answer of the defendant *X. Z.* to the complainant's bill in this cause, and carefully peruse and inspect the several charges, or items therein? Did or did not the said *A. B.* in his life time, and said *X. Z.* the said defendant, since his decease, respectively pay, lay out, or expend at or about the

the respective times, and to the several persons, and for the purposes therein mentioned, all or any, and which of the sums of money therein charged, or mentioned? And set forth how, and by what means you are able to depose to the matters, with your reasons thereon, at large.

EXAMINING WITNESSES in the COUNTRY by COMMISSION.

IF the plaintiff's solicitor finds it necessary to take out a commission to examine witnesses in the country, he must serve the defendant, or his clerk in court, with a *subpœna to rejoin*. This writ may be had as a matter of course, returnable some day in term; or it may be obtained by petition, *returnable immediately*, in which case your prayer must be to the following effect:

That a subpœna to rejoin, returnable immediately, may be made out, and that service thereof on the defendant's clerk in court may be good service, and that the defendant shall, in four days after service thereof, join and strike commissioners names; and, in default thereof, that the plaintiff may have a commission for examination of his witnesses directed to his own commissioners.

The order, when drawn up, entred, and served, must be carried to your clerk in court, as a voucher for making out the commission; and before the same can be done, the parties must strike commissioner's name.

The plaintiff's solicitor leaves the names of four commissioners with his clerk in court, who, on receipt of same, calls on the defendant's clerk in court for commissioners names. Having received

The names of strike commissioners names.

ceived a note of fame, and being instructed by his client, each clerk in court strikes out *two*; the plaintiff beginning first, till the *eight* are reduced to *four*, which is called *joining in commission*; or the clerks may deliver to each other *two* a piece by consent. This matter being settled, the plaintiff's clerk in court gets the commission sealed, and delivers it to plaintiff's solicitor, with a label annexed, directing to whom, and what notice is to be given for the execution of such commission.

Note : In Easter vacation, 10 days notice is given ; at other times usually 14 days.

If the defendant's solicitor neglects or refuses to join and strike commissioner's names pursuant to order, the plaintiff's clerk in court may make out the commission directed to the plaintiff's own commissioners. If so, no notice of the execution of the commission need be given to the defendant, his clerk in court, or solicitor.

Though the first moving for, or procuring a commission to examine witnesses, is the privilege of the plaintiff in the suit ; yet if the defendant has reason to believe the plaintiff will not proceed on his commission, he may apply to the court for a *duplicate*.

If the defendant has witnesses living in the country, a great distance from the plaintiff's witnesses, or where he has none, the defendant's solicitor may, by motion of court, or petition, obtain an order for a commission to examine his witnesses only ; yet notwithstanding the plaintiff may join in commission, if he thinks proper, and have one or two commissioners to attend to cross-examine the defendant's witnesses.

The commission being ready, the plaintiff's solicitor, or clerk in court, gives notice thereof *(the same being signed by his two commissioners)* to the defendant's clerk in court ten or fourteen days before the time appointed, *(according to the foregoing regulation)* and also makes out a sufficient number of tickets, appointing the witnesses to attend, which tickets must be signed by the plaintiff's commissioners, and served on each witness. The notice to the parties of examining a witness may be left at the house with the wife or servant; but to a witness, it should be personal service. If a witness does not attend, on application to the court, he will be ordered so to do at his own expence; and if he disobeys such order, the party may obtain an *attachment* against him.

How to proceed on the commission.

Note: Preparatory to this business, the solicitors on both sides may write the title of the cause, and the introductory part of the depositions, and likewise get some skins of double 12 d. parchment, for ingrossing the depositions as taken by the commissioners.

The commissioners being met for the purpose of opening the commission, the solicitor, who has the carriage of the commission, delivers the same to his commissioners; and interrogatories on each side being exhibited, they open the commission, (which till then remains sealed) to see their authority. They first administer the oath to each other, and also to the clerks, which, when taken, are annexed to the commission, and then sign their names to the bottom of the interrogatories of each respective party, which done, they call for the witnesses before them, one at a time; and it is usual, to save time and trouble, for the solicitors to send a note with the witness to the commissioners to set forth the particular interrogatory that the witness can speak to. The manner of examining the witnesses is

The Modern Practice of the

a matter settled between the solicitors, though either party may cross-examine each other's witnesses, on the whole set of interrogatories, or any one or more of them, as they think proper, or are instructed.

Note: The solicitors and commissioners are allowed a guinea per day, their clerks half-a-guinea a-day, and all expences.

If notice be given of opening the commission, and at the day appointed, though it is opened, nothing is done, nor any adjournment made, such commission is determined, and at an end, unless the other side will agree to adjourn, or take a new notice. If the commission is not opened, on new notice the party may execute the same, if the other side does not in the interim obtain an order for stay of proceedings, till the costs of former attendance of commissioners, witnesses, &c. are paid. If it was the fault of the party, who had the carriage of the commission, he must pay those costs, and renew the commission at his own expence, and when renewed, the other side usually has the carriage of the commission.

Note: If an adjournment is made, a memorandum must be taken of the same, which must be signed by the commissioners.

As to making up the commission.

The depositions being taken, ingrossed, and carefully examined with the paper-copies, the commissioners make up the commission by signing each schedule or skin, and also the interrogatories, and annex both to the commission; and on the back thereof, about the middle, indorse their return in these words:

High Court of Chancery.

301

The execution of this commission appears in a certain schedule (or schedules as the case may be) to this commission annexed.

A. B.

T. C.

This done, they fold up the proceedings and commission together in such a manner, that the label of the commission may hang out or appear on the outside; they bind the same round with tape several times, setting their seals at the several meetings and crossings of the tape, and in some places their names. The paper drafts, which have been taken in the course of the business, they bind and seal in the same manner, and then cut the same in half, and one of the commissioners on each side takes the half of his opponent's paper minutes, drafts, &c. One of the commissioners takes the commission to send or bring to town; if sent, such commissioner must personally deliver it to the person who brings it; for such person must swear to the following effect:

That he received it from the hands of one or more of the commissioners therein named.

When brought to the solicitor or clerk in court, you indorse the sealed commission thus:

1st April 1776. On the oath of T. T. before.

Carry the person who brings the commission to the publick office in *Symmond's-Inn*, and get him sworn, when you leave the commission with the clerk, where it remains sealed till publication is duly passed.

If a commissioner brings up the commission, no oath is required of him, he being sworn before; but you indorse the commission thus:

1st

The Modern Practice of the

*1st April 1776. Received by the hands of A. A.
one of the commissioners.*

*Note: Five shillings is allowed by the court to
the person who brings up the commission, if he is
not a commissioner.*

The manner
of passing
publication
on the com-
ing up of the
commission.

On the commission being returned, the clerks
in court for the plaintiff and defendant may pass
publication by consent. This business is done
by them in their rule-books; on which publi-
cation passes. When publication has passed,
the depositions are copied and delivered to the
solicitors, for which the clerk in court charges
10 d. per sheet.

If the other side does not consent to passing
publication, the party may give a rule to pass
publication, which rule is out that day se'nnight.
Where witnesses are examined on both sides on
a joint commission, one rule only is sufficient; and
either party who has examined, and would have
publication pass, may give such rule; but where
one side has examined witnesses, and the other
side has not, nor had a commission, the party
who has examined must first give a rule to pro-
duce witnesses, and after that another to pass
publication; on which, the other side, if he has
any witnesses to examine, must give a notice of
motion, and move the court to enlarge the time
for passing publication, and also, for a commis-
sion to examine witnesses; and if he does not
examine thereon within the time limited, pub-
lication passes of course.

PRECEDENTS of a COMMISSION, NOTICES, &c. on examining WITNESSES in the COUNTRY.

The Form of a Commission to examine Witnesses.

GEORGE the Third, &c. to ——— greeting: KNOW YE, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give unto you, any three or two of you, full power and authority, diligently to examine all witnesses whatsoever upon certain interrogatories to be exhibited to you, as well on the part of *A. B.* complainant, as on the part of *C. D.* defendant, or of either of them; and therefore we command you, any three or two of you, that at certain days and places to be appointed by you for that purpose, you do cause the said witnesses to come before you, and then and there examine each of them apart upon the said interrogatories, on their respective corporal oaths first taken before you, any three or two of you, upon the holy evangelists, and that you do take such their examinations, and reduce them into writing on parchment; and when you shall have so taken them, you are to send the same to us in our *Chancery*, wherever it shall then be, closed up and under your seals, or the seals of three or two of you, distinctly and plainly set, together with the said interrogatories, and this writ. And we further command you, and every of you, that before you act in or be present at the swearing or examining any witness or witnesses, you do severally take the oath first specified in the schedule hereto annexed; and we do give you, any three, two, or one of you, full power and authority, jointly or severally, to administer such
oath

The Modern Practice of the

oath to the rest, or any other of you, upon the holy evangelists. And we further command, that all and every the clerk or clerks employed in taking, writing, transcribing, or ingrossing the deposition or depositions of witnesses to be examined, by virtue of these presents, shall, before he or they be permitted to act as clerk or clerks, as aforesaid, or to be present at such examination, severally take the oath last specified in the said schedule annexed: And we also give you, or any one of you, full power and authority, jointly and separately, to administer such oath to such clerk or clerks upon the holy evangelists. Witness ourself at *Westminster*, the _____ day of _____, in the _____ year of our reign.

Here put the surnames of the master of the rolls, and the six clerks. Indorse on the back of the writ, towards the top, By order of court.

The oaths annexed to the said commission are on unstamped parchment; but the commission has a treble sixpenny stamp.

The Form of the Commissioners Oath.

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality, to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses, produced and examined by virtue of the commission hereunto annexed, upon the interrogatories now produced, and left with you. And you shall not publish, disclose or make known, to any person or persons whatsoever, except to the clerk or clerks by you employed, and sworn to secrecy in the execution of this commission, the contents of all, or any of the depositions of the witnesses, or
any

any of them, to be taken by you and the other commissioners in the said commission named, or any of them, by virtue of the said commission, until publication shall pass by rule or order of the High Court of Chancery — *So help you God.*

The Form of the Clerk's Oath.

YOU shall truly, faithfully, and without partiality, to any or either of the parties in this cause, take and write down, transcribe and ingross the depositions of all and every witness and witnesses, produced before and examined by the commissioners, or any of them named in the commission hereunto annexed, as far forth as you are directed and employed by the said commissioners, or any of them, to take, write down or ingross the said depositions, or any of them. And you shall not publish, disclose or make known, to any person or persons whatsoever, the contents of all or any of the depositions of the witnesses, or any of them, to be taken by you and the other clerks in the said commission named, or any of them, by virtue of the said commission, until publication shall pass by rule or order of the High Court of Chancery. — *So help you God.*

The Form of the Witnesses Oath.

You are true answer to make to all such questions as shall be asked you on these interrogatories, without favour or affection to either party, and therein you shall speak the truth, the whole truth, and nothing but the truth.

So help you God.

Note: *The oath being administered, the witness's name and place of abode, addition and age, are to be*

The Modern Practice of the

he writ in the same paper, under the title of the depositions, &c. And the commissioners must themselves examine the witnesses on the interrogatories, and not leave it to their clerks; wherein they are to examine but to one interrogatory at a time, and shall not read to the witnesses another interrogatory, till they have gone through and answered the former: And the commissioners shall likewise take down what comes from the witnesses on their examination, and not permit them, on their own reading of the interrogatories, to set it down themselves; but the depositions must be carefully read over to each witness; and if, upon such reading, any thing is mistaken that the witness cannot swear to after he has been examined, the depositions must be rectified; which done, the witness must sign his name, or mark to such depositions as he is examined to.

Note: A witness may be allowed to use short notes, which he brings with him to help his memory; tho' not the substance of the depositions; nor may he transcribe *verbatim* such notes. And the commissioners ought not to ask any *idle* questions, or such as are foreign to the interrogatories, nor set down impertinent answers, but only what are material on the points interrogated.

The Form of a Notice of executing a Commission given by a Clerk in Court.

By virtue of a commission issued out of his majesty's high court of *Chancery*, directed to certain commissioners, therein named, for the examination of witnesses in a certain cause depending in the said court, between, &c. This is to give you notice, that the said commissioners intend to execute the said commission on *Monday* the ——— day of ——— next at ——— of the clock of the same day, at the house of, &c.
where

where the commissioners may be present, if they please. Dated, &c. A. B.

To D. C. (to whom notice is agreed to be given.)

Note: When the commissioners have received the commission, they must give notice in writing to the other side, of the time and place of executing it.

The Form of a Notice of executing a Commission given by Commissioners.

WHEREAS we have received a commission issuing out of his majesty's high court of Chancery, to us, and, &c. directed for the examination of witnesses in a cause there depending, between A. B. plaintiff and C. D. defendant: These are to give you notice, that we will execute the said commission on the behalf of the plaintiff, at the house of &c. known by the sign of, &c. situate, &c. in the county of—, on—, being the — day of — next ensuing, at the hour of — o'clock in the forenoon of the same day, when and where you, and your commissioners and witnesses concerned, may be present, if you please. Given under our hands, this — day of, &c.

E. F.

To Mr. C. D.

G. H.

Note: This notice is to be delivered to the party, or left at his house with his wife, or servant, fourteen days before the time of executing the commission, as has been before observed (except a shorter time be appointed by order of court, which very seldom is done) or the depositions shall be suppressed. And the witnesses are also to be served with a summons to appear before the commissioners at the time and place, to depose their knowledge to each interrogatory; which summons is in this form:

The

The Modern Practice of the
The Form of a Summons for Witnesses to appear be-
fore the Commissioners to be examined.

In Chancery.

Between A. B. plaintiff,
 C. D. defendant.

WHEREAS we have received a commission issuing out of his majesty's high court of *Chancery*, &c. (*ut supra*); And whereas we are informed, that you whose names are here underwritten, are material witnesses for the plaintiff (or defendant) in this cause: These are therefore, by virtue of the said commission, to will and require you, and every of you, personally to be and appear before us, or any three or two of the said commissioners, at the house of, &c. known, &c. in, &c. on the———day of ————next, then and there to be examined, and to testify your knowledge for and in behalf of the plaintiff (or defendant) and you are then and there to attend, and not to depart until you have been examined on the part of the said plaintiff: And herein you are not to fail. Given under our hands, &c.

CASES of PRACTICE, on INTERRO-
GATORIES, examining WITNESSES, &c.

ON hearings on bill and answer, no evidence is to be admitted (*except matters of record*) but what arises from the bill and answer itself; when the parties proceed to the examination of witnesses, the cause is determined by such evidence as arises from the depositions of witnesses examined upon interrogatories. The plaintiff and defendant may ordinarily exhibit interrogatories;

gatories; for when the parties are at issue, it is necessary to consider, as well what the other side may examine unto, as what the party themselves can prove, and so counter or cross interrogatories may be proposed, if there be occasion.

Where interrogatories are exhibited in the examiner's office, and witnesses examined therein, either party may, without application to the court, or order for that purpose, exhibit one or more interrogatories, or a new set of interrogatories, for further examination of the same or other witnesses; but where the commission is taken out for examination, there no new interrogatories, or set of interrogatories, can be exhibited without motion or order of the court; because the examiner is considered by the court as an officer of credit and sworn, and so presumed to be impartial, and that he will not disclose the depositions to either party; but the commissioners are private persons, and not sworn, and are called the plaintiff's commissioners, or defendant's commissioners; and so, without leave of the court, no new interrogatories can be added before them. *Gilb. Hist. & Pract. of Equity*, p. 42.

The foregoing practice is now altered by an order made 8 Geo. 1. which enacts, that all commissioners and their clerks, before they act in the commission, shall severally take an oath not to publish or disclose the contents of the depositions; which oath is to be annexed in a schedule to the commission; and also, in all commissions which shall issue to examine witnesses, a clause to that effect is to be added, and made part thereof; and any commissioners or clerk, acting contrary to the premises, on proof of the offence, shall be punished as the court shall think fit to adjudge and order.

On the parties having copies of the depositions delivered to them, and come to see the interrogatories exhibited by each side, and find the inter-

interrogatories to be too leading or impertinent, then is a proper time to refer them to a master for being too leading, impertinent or scandalous. This is done by motion or petition of course. If the master reports the interrogatories leading, and this report is not excepted to, then all the depositions taken to these interrogatories must stand suppressed by motion or petition: if the report is excepted to, the court never countenances leading or impertinent interrogatories, for they are not over curious in these matters, because it may fall out, that interrogatories may be reported illegal in the very vital part of the examination, and on the very point the cause turns; and when this is the case, the party who refers them gains his end; for perhaps he had a very bad cause, if the depositions had not stood; whereas if they are suppressed, he has a very good one, since his adversary must hear the cause without any proof at all; unless the court is pleased to grant him another commission on payment of costs for his leading interrogatories; which is seldom or never done after depositions are published. If interrogatories are reported leading in points on which the *gist* of the case does not turn, and if the depositions in these parts should be suppressed, the party might have evidence left without it; but if the life and quintessence of the cause turns upon it, he ought to struggle to the last before his depositions are suppressed.

On new interrogatories being ordered to be exhibited on suppressing the old, the court was moved, that a new set of interrogatories might be drawn and settled by the master, for the examination of this witness, whose evidence was very material, and yet must be wholly lost, if the court would not indulge them this way, though against the common practice it was insisted to be of dangerous consequence; yet one precedent being produced

produced to this purpose, and the interrogatories which had been suppressed, were such as might have been drawn by any other counsel, without any apprehension of their being leading, they let in the party to the benefit of this witness's testimony, and ordered new interrogatories to be settled by a master, and put in for his examination over again. *Gilb. Equity Pract.* 150. *Abr. Eq. Ca.* 232. S. C.

On witnesses being examined in court on a schedule of interrogatories, there shall be no new interrogatories put in to examine the same witnesses, unless by leave of the court, when they may be exhibited in court for examining new witnesses at any time before publication, notwithstanding there has been a joint commission executed in the country. On a *supplemental bill*, the court will, on motion, give leave to add to the first interrogatories, so as the new interrogatories contain nothing but what relates to the *supplemental matter*. *Ord. Chanc.* 126.

A re-examination of witnesses is not allowed, though on the same interrogatories, without leave of the court. If either party have a commission *de novo*, after he has examined on a former commission, he must examine on the same interrogatories as were exhibited by him on the former commission; and no other interrogatories can be admitted without an order, or consent of the parties.

If leave is given to examine a witness after publication, and before hearing, a master is commonly ordered to settle the interrogatories, and that they may be to such points only as were omitted before, and as are now ordered to be examined into; unless it be merely to prove an exhibit, and the interrogatory was before filed.

All interrogatories for proving particular points needful upon a reference to a master, shall be

be directed by the master, and must be to such points only.

By the orders of the court, the parties are to make their full proof before publication, and hearing of the cause; yet after hearing, if there be a reference to a master for the stating an account, and he shall find any particular points and circumstances needful to ground his report upon, which are not fully proved, nor could properly be examined to before the hearing of the cause, he may direct the parties to draw interrogatories to such points or circumstances only; and such witnesses are usually examined before such master on such interrogatories, if the witnesses be or reside within *ten miles of London*; when farther off, and the parties desire it, he may, by his certificate, direct a commission into the country; which is to be made out by the plaintiff or defendant's clerk in court that desire such commission. On the return of such commission, publication shall forthwith pass according to the course of the court. *Vide Ord. Chan.* 156.

It is not usual to examine to a matter of account before hearing, but after, before a master, if the witnesses be in town, or can easily be procured; if not, then by a commission to be directed by the master on his certificate.

Note: Either party may examine witnesses to an account, or to a particular thing after hearing.

On a prosecution for a contempt for breach of an order of the court, or otherwise grounded on an *affidavit*, the interrogatories shall not be extended to any other matter than what is comprehended in the said *affidavit* or order; and if any other shall be exhibited, the party examined may, for that reason, demur unto them, or refuse to answer them.

A commission to examine witnesses, is sometimes to examine them to the merits of the cause, or to some particular point in question; or it may be to examine them touching a contempt, or the breach of some order of court, &c. The mode of proceeding on a commission to examine witnesses. Examinations in the cause is generally before hearing, though sometimes it may be after hearing, as upon an account referred to a master, or new matters arising at the hearing.

A commission is also often had to examine witnesses *in perpetuam rei memoriam*.

It is also obtained to examine witnesses beyond sea, and then if they be foreigners, or natives, to examine them on their oaths, and the oaths of skilful interpreters.

When each commission is executed, one of the commissioners must deliver the commission executed into the masters publick office here in England, and make the usual oath, *That he received it from the hands of one or more of the commissioners, and that the same has not been opened nor altered since he so received it.* If one of the commissioners brings over such commission, he need make no oath, but the plaintiff or defendant's clerk in court only indorses the day, month, and year, on such commission, and underneath writes; *By the hands of A. B. one of the commissioners.*

Where a cause be only matter of account, which may be, and generally is, examined to after hearing; yet where a defendant prays a commission before hearing, the court always grants it, as being what he has a right to.

Though this commission is to examine witnesses, and is not ordinarily to be granted till the cause be at issue; yet if a witness be very aged or sick, on making an *affidavit* thereof, the court will sometimes order it *de bene esse* even before answer.

P

When

When the parties have joined and struck commissioner's names with each other, they proceed to make out a joint commission to examine; if the defendant's clerk in court fails to join and strike commissioners names, being served with an order and *subpœna to rejoin*, for that purpose, the plaintiff may then make out a commission *ex parte*, directed to his own commissioners; in which case, no notice of it's execution need be given to the other side.

When the defendant rejoins *gratis*, or the parties go to commission by consent, there needs no *subpœna* to rejoin.

The first taking out and carriage of the commission is regularly the privilege of the plaintiff; though the court will sometimes indulge the defendant with a *duplicate*, because, in case the plaintiff refuses to give notice of the executing thereof, and does not intend to execute it, then the defendant may make use of his *duplicate*, and proceed to examine witnesses by virtue thereof; this is most usually granted, when it is doubtful whether the plaintiff will execute his commission or not; especially if he be forced on by the defendant, as in an *injunction* cause, where delay is only designed: And sometimes this *duplicate* is granted by consent.

If the witnesses for the defendant live far distant from the plaintiff's, as *sixty* or *eighty miles*, or beyond the seas, where the plaintiff has none; in this case the defendant may have a commission for examining his witnesses only, and have the carriage thereof, though then the plaintiff may join in such commission, and cross-examine the defendant's witnesses, on the plaintiff's interrogatories, or examine what other witnesses he pleases on such commission.

If a cause is at issue, and the plaintiff will not go on to commission, the defendant may obtain an order of court to have a commission to examine

mine his own witnesses, and shall have the carriage thereof; but if the plaintiff commit any abuse in the execution of the first commission, the defendant shall have the carriage of the second.

Where a commission is lost, by the fault of him who had the carriage of it, and is renewed, the other side sometimes hath the carriage of such renewed commission.

Note: The examiners have a right to examine all witnesses in town, or within *ten miles* thereof, which is the circuit of the court; if any commission be made, or witnesses examined within that district, the depositions taken by such commission will, on complaint, be suppressed, and the clerk, who made out the commission, will stand committed for a misbehaviour, and a breach of the known duty of his office.

No commission can be executed in term time, unless by leave of the court, or by consent of the parties to the suit.

These commissions for examination of witnesses are to be made returnable on one of the returns in or before the term, unless where the parties agree to have it *without delay*, or an order is obtained for that purpose. *Moseley, p. 176.*

The party, who has the carriage of the commission, must give *fourteen days* notice under his commissioner's hands of the time and place for executing the commission; and such notice must be given to all the defendants, who join in such commission; otherwise it is not good notice; and the depositions may be suppressed for irregularity, though in this case personal notice is not necessary. In default of notice of executing the commission, the court will grant the other side a new commission, or, in case of the plain-

tiff's refusing to give notice, the defendant having a *duplicate* may use it. And if notice is directed to be given to a person you cannot find, then, on *affidavit* thereof, and filing it, you may, on motion or petition, obtain an order for a master to appoint a time and place.

If two of the plaintiff's commissioners attend at the time and place appointed, they may proceed therein *ex parte*, though the defendant's commissioners fail to attend; but if the defendant's commissioners attend, and not the plaintiff's, they cannot go on; because the plaintiff, having the carriage of the commission, will not produce it, if he is disappointed of his commissioners; which makes a *duplicate* thereof more necessary; for then the defendant's commissioners may proceed in executing the *duplicate*.

Where there is no *duplicate*, but defendant's commissioners attend at the time and place appointed, and not the plaintiff's, the defendant is to have *costs*, occasioned by the defendant's commissioners and witnesses attending at the place appointed, and the court will permit him to sue out another commission, and order him to have the carriage of such new commission.

In a cause where one commissioner met on each side, and the plaintiff's commissioner went away without doing any thing, whereby the commission was lost, *It was ordered*, that the plaintiff should pay the defendant his costs, and granted a new commission, and the defendant the carriage thereof; for one commissioner on a side is sufficient, and one at least on each side must attend.

The commission being opened and read, both parties are then obliged to exhibit their interrogatories. If they intend to examine any witnesses, the interrogatories on both sides are to be signed by all the commissioners; then present. If the plaintiff exhibits his interrogatories, and the

the defendant neglects to exhibit any, and his commissioners attend the execution of the commission, whereby they have an opportunity of seeing and hearing every thing that is proved on the plaintiff's part, and yet perhaps all this while they have exhibited no interrogatories; and after all this it often falls out, that the defendant moves the court for a new commission, upon suggestion that he had no opportunity of examining his witnesses at the last commission; and if it shall appear by *affidavit* or certificate of the plaintiff's commissioners; that the defendant's commissioners attended during the whole time of the execution of the commission, and never exhibited any interrogatories, the court will, but very rarely, and that upon special circumstances, grant the defendant another commission. *Vide 1 Chan. Ca. 274.*

If the defendant has put in interrogatories, and his commissioners attend without examining any witnesses, the court may grant or deny him another commission, as the circumstances of the *affidavit* of the commissioners shall appear; his commissioners ought to withdraw, and care must be taken, if a new commission is granted, that neither party add to, nor alter their interrogatories. They must examine to the old interrogatories exhibited at the former commission, and are not to add new ones without the special leave of the court, which are to be settled by the master, and are never suffered but in extraordinary cases, and the party praying this commission must pay all the charges thereof, unless the other side examines any witnesses of his own, when he is to bear a part of the charge.

If notice be given of executing the commission, and at the day appointed the commission is opened, and nothing done, nor any adjournment made, the commission is lost, except the other side agree to adjourn, or to take fresh notice. If

the commission be not opened, and he who has the carriage thereof gives new notice, and then executes it, this is a sufficient execution, unless in the mean while the other side obtain and serve an order to stay proceedings till the costs of the former attendance of the defendant's commissioners and his witnesses be paid, and that they are not paid.

It is usual, when an adjournment is made, to make a memorandum thereof, which the commissioners are to sign.

If, by default of him that has the carriage of the commission, nothing is done therein, he shall bear the charges the other side is put to about it, as the fees of court, bringing or retaining commissioners or witnesses, to be ascertained by the oath of the party, or him that disbursed the money for him, and shall renew the commission at his own costs. *Vide Ord. Chan. 132.*

Where a commission is lost by the fault of him that had the carriage of it, and is renewed, the other side commonly has the carriage of such new commission.

If a commission to examine witnesses becomes void by the error of the clerk in making it, the costs are generally borne by him, and that side for whom it was taken out, and who had the carriage of it.

When due notice has been given of opening a commission, if the one side produces and examines all his witnesses, and the other side does not, but prays a new commission; if it be granted, he that prays it shall bear all the charges of such renewed commission, both in the court and in the country, and as well for the other's commissioners as his own; and the other side shall be permitted to cross-examine the witnesses produced by him that renews the commission. But if the other side will examine any witnesses but his

his own, then he shall bear his own part of the charge, which is to be ascertained by the oath of the party, or of him who disbursed the money for him. *Ord. Chan.* 132.

The person at whose instance a commission is renewed, after a former commission executed and returned, and he, by the default of whom, or of whose commissioners a former commission was not executed, and it is thereupon renewed, shall at his peril examine all his witnesses on that renewed commission, or shall examine them in court by the end of the term it is returnable, without any more or further delay. *Ord. Chan.* 133.

When the defendant has been examined on interrogatories, and publication passed, the plaintiff ought not to have a commission to examine witnesses, in order to falsify the defendant's examination, this being considered by the court as tending to multiply causes, and to make them endless. *Vide 3 Will. Rep.* 413.

When a defendant is to perfect his answer on interrogatories, or to be examined for a contempt, although the rule of court be, that he shall be examined in *four days*, or stand committed; yet if the party be in the country, he shall have a commission to take his examination. *Vide 1 Vern.* 187.

A new commission will be granted, if exhibits or writings are altered or interlined. *Hill.* 25 *Car.* 2. 1 *Chan. Ca.* 273.

By a case where a witness alledged, that he had mistaken himself at a commission; the commission being returned, he came to *London*, and made an *affidavit* that he was surprised; on which a special commission issued to re-examine the witnesses, which was done accordingly. Though this special commission was afterwards suppressed by motion, by advice of the master of the rolls, with the six clerks, as contrary to

The Modern Practice of the

the practice of the court. *Vide 1 Chan. Ca. 25, Eq. Ab. 102. (a) c. 3. Nel. C. R. 92. S. C.*

When publication has passed, if any new matter arises on debate, or hearing the cause, which may be thought material by the court, a new commission may be granted. *Vide 2 Chan. Ca. 75.*

A commission may be had to examine witnesses beyond sea, and if foreigners, to examine them on their oaths, and also the oaths of skilful interpreters. In this case, when it is apprehended the returning by a commissioner, or by some person that can make *affidavit* of the true keeping of it will be too great a delay, the court sometimes has ordered that a commission be delivered by a master to send by the post, and that he receive the same back when it is executed by the post, if it be returned; otherwise, one of the commissioners personally delivers the commission to the person that brings it to *England*, to the intent that when arrived here, he may take the usual oath, *viz. That he had it from the hands of one of the commissioners, and that the same has not been opened or altered.*

A general *affidavit* of having material witnesses beyond sea, is not a sufficient ground for a new commission; but the witnesses must be named in the *affidavit*, and the point mentioned to which they can materially depose. *Vide 1 Vern. 334.*

The ground for granting a commission beyond sea to examine witnesses must depend on the special circumstances of the case.

When there shall be said to be sufficient circumstances arising from the nature of the case, on which a commission for examining witnesses beyond sea ought to be granted. *Vide Barnard, 193, 134.*

If commissioners misbehave themselves, the court will grant an *attachment* against them; but regularly

regularly a commission cannot be suppressed, but on a reference to the master, and his certificate of the irregularity. *Vide Cary p. 43.*

If commissioners misbehave themselves, or if the commission is executed contrary to notice, or not due notice given, or the depositions returned are so badly ingrossed, or interlined, that they are not legible, in this and many other cases of the like nature, there may be good reason to suppress the depositions then they are brought into court by the proper officer, and the court takes the ingrossment into their hands; and if it is possible to be read, or if being handed down to the clerk, he can read it, they will hardly suppress the depositions, and put the party to new trouble of examining over again.

A commissioner may be examined as a witness; but then he must be first examined; and if others be examined before him in his presence, he cannot be examined afterwards, having heard the former depositions, and for that reason a commissioner was examined in court, his former deposition being suppressed. But after he is examined, he may then join, and proceed in executing the commission.

When a commission is returnable *without delay*, if it be within this kingdom, [if made out in the vacation time or at any of the seals after the term,] it must be returned by the second return of the next term; if executed afterwards, it is void, and the depositions taken thereon ought to be suppressed. *Vide 2 Vern. 179.*

Note: If a commission be made out the first or second seal before the term, or the first day of term returnable without delay, the same return holds good to the end of that term.

Notice of executing a commission is sometimes served on the clerk in court, if signed in court;

The Modern Practice of the

or may be served upon the solicitor in town or country, as the parties can agree. If the parties are willing, short notice may be given.

Peers of the realm, as well as others, are to give their testimony upon oath.

A witness was examined on a commission, swears reflecting words, yet he ought not to pay any charges, it being none of his fault, but the commissioners and their clerks fault to take down that part of the deposition. *Vide 2 Will. Rep. 406.*

A commission returnable without delay must be executed, if within the kingdom, by the second return of the next term, or else it is void, and the deposition to be suppressed. *Vide 2 Vern. 197.*

There must be a label to all commissions, to this effect :

To (naming the commissioners) a commission empowering you to examine witnesses, as well on the part of A. B. complainant, as on the part of C. D. defendant, or either of them, returnable without delay, or on fourteen days notice to the defendants.

When the commission is obtained on the part of the defendant, and the plaintiff joins therein, *the words of the commission and label are, as well on the part of C. D. defendant, as on the part of A. B. plaintiff.*

If it be an *ex parte* commission, then, if obtained by the plaintiff, the words are : *On the part of A. B. complainant against C. D. defendant, &c.*

The plaintiff, two days before the execution of a commission to examine, was arrested by the defendant, and was in execution, but was ordered to be discharged, and the defendant ordered to pay costs, and be at the charge of a new commission. *M/s. Cases.*

Pro-

Proceedings upon the execution of a commission to examine witnesses *in perpetuam rei memoriam*, are the same as upon a general commission. *Ibid.*

To establish
the testimony
of witnesses.

The court cannot make an order to examine a plaintiff *de bene esse*, saving just exceptions, though they will make such order to examine a defendant; for the defendant should have demurred to such immaterial plaintiff.—If a corporation would make one of their own members a witness, they must *disfranchise* him. 1 Will. 595. But no plaintiff ought to be a witness for another, as being liable to costs. *Ibid.* 596.

A witness was ordered to be examined *de bene esse*, on *affidavit* that the thing examined unto lay only in the knowledge of the witness, and was a matter of great importance, though no *affidavit* of the witness's being old or infirm. *Vide* 3 Will. Rep. 77. Moseley 388. pl. 199.

If the party interested shew cause to the contrary, and allowed by the court, then the plaintiff is to desist from examining such witness.

If by commission, he may examine *ex parte*, or the defendant may come in by appearance and join in commission, if he pleases, and then *fourteen days* notice is to be given of executing the commission; and the defendant may by interrogatories cross-examine such witness, if he thinks fit.

Though the depositions are not ordinarily to be published while the witnesses live, yet in some cases, as by consent of parties, or upon oath, that the plaintiff has some trial at law, wherein he shall need them, and that the witnesses are not able to travel, or for other good reasons, the court will sometimes (though very rarely) order publication in the life time of the witnesses; and then the party may exemplify the depositions, and they may be given in evidence in any other court, by order of this court.

If a matter is properly triable at law as a title, and the plaintiff can have an opportunity to try it there; this kind of bill is not to be brought here, till the party hath affirmed his title at law; if he should, it would be dismissed upon a demurrer.

These depositions are not to be given in evidence, or made use of against any others but the defendants, who were *subpœnaed* to defend the matter, or some claiming under them, whose interest accrued since the bill preferred.

When lands are devised by will from the heir at law, and there is no occasion or opportunity to prove or establish it at law, it is often necessary to prove such will in *Chancery*, to perpetuate the testimony thereof; the way to do which is to exhibit the bill against the heir at law, and set forth the will *in hæc verba*. And the defendant having answered, they proceed to issue as in other cases; and then examine the witnesses to the will, or prove their hands, if they are dead. The will (if witnesses are examined in town) must be left in the examiner's office to be examined to, which done, and publication passed, the cause is at an end, an order or rules being first obtained for publication. And the defendant, who is the heir at law, and examines no witnesses touching the validity of the will, may give notice of motion for the plaintiff to pay him his costs to be taxed by a master, which the court usually orders.

Commonly where an estate is considerable, the plaintiff is at the charge of an *exemplification* of the proceedings of that cause.

Though this court suffers examinations to perpetuate the testimony of a will, yet it will not barely try the validity of a will; but if the same come collaterally in question upon a bill for the performance of a trust, or touching a devise out of lands; This court may prohibit the spiritual court

court to meddle in the proof any matter farther than concerns the goods or personal estate, &c. Where there is no occasion or opportunity to prove and establish a will at law, it is the best and safest way to prove it in this court.

The proceedings on a bill to perpetuate the testimony of witnesses are mostly the same as in other cases. *Vide* 1 Vern. 452, 1 Vern. 331. 1 Sa k. Cro. Eliz. 352. Raym. 335. Hob. 112. Godb. 3, 6. 1 Vern. 105. 2 Vern. 159. 1 Vern. 185, 308, 441. 1 Vern. 154. *Maxims of equity*, 33.

If the plaintiff, to perpetuate the testimony to a will concerning lands, exhibits a bill against the heir at law, setting forth the will and the defendant answers, the plaintiff has then only to proceed to issue, and examine witnesses to the will to perpetuate their testimony, and then the will being brought to the examiner's office (*if in town*) and publication passed, the cause is at an end. An order must be first obtained for passing publication.

This sort of bill ought not to be brought for such trivial matters as common ways, water-courses, &c. till after a recovery at law. *Vide* Vern. 308 & 312.

A bill to examine *in perpet.* &c. by a devisee against a purchaser without notice, shall not be allowed, till a will is established by verdict at law. *Vide* Vern. 354.

Neither can such a bill be brought to establish one's title, until made good by verdict at law, if he is under no impediment of trying his title at law. *Vide* Vern. 441.

A defendant demurred to a bill to perpetuate, &c. whereas he should not have demurred; but either assented by his answer to examine, or shewn sufficient cause why witnesses should not be examined, and left it to the consideration of the court, whether the cause be sufficient or no; and
the

the defendant was accordingly ordered to withdraw his demurrer, and put in an answer, and thereby either consent to such examination, or shew cause to the contrary. *Southall v. Peryn*, 26 Eliz.

The depositions of a witness, who was examined *in perpetuam rei memoriam*, were suppressed on petition after his death, and the examiner discharged, and committed for foul practice and irregularity in taking them, the plaintiff being suffered by the examiner to instruct him, and the witness being proved corrupted; and as he had been examined on a trial to the same points, plaintiff might give evidence of what he swore. *Vide Moseley* 327.

As to examining witnesses *viva voce*, it is incumbent on the party who wants to examine to produce his witnesses in court, at the hearing, having first obtained an order for that purpose, and also the exhibits, which are delivered together with the order to the register in court, and the court examines the witnesses accordingly.

Examining
witnesses *viva voce*.

An order to prove a deed *viva voce* at the hearing, but not permitted to prove witnesses hands who were dead, but leave given (by putting off the cause) to go to the examiner. *Pr. Ch.* 69. pl. 59.

A person may prove an exhibit *viva voce* at the hearing, but cannot examine the witnesses only to the execution. *Vide Moseley* 391.

The court will not grant an order to prove an exhibit *viva voce* on the hearing exceptions to the master's report, because on arguing them you can offer nothing that was not before the master. *Vide Moseley* 190. pl. 103.

A party interested, by releasing his right, may be a witness. *Vide 2 Vern.* 375. 2 *Vern.* 472.

Where there is a dispute touching money given for the benefit of parishioners, none of the

the inhabitants ought to be admitted as a witness. *Vide 2 Vern. 317.*

A bankrupt by releasing to the assignees, may. *Vide 2 Verns 937.* But whilst he continues interested, he can by no means be a witness. *2 Vern. 463, 464.*

A legacy, as five shillings given to a private person, or five pounds to a nobleman, does not hinder them from being a witness for the will. *Vide 1 Vern. 254.*

A witness appearing to be interested, though he swears he hath received satisfaction, yet he is not a competent witness, for the law will not suffer him to swear this, but the release or other act destroying his interest must be proved. *M/s. Cases, Mich. 11 Geo. 2.*

Plaintiffs cannot be examined for each other, but defendants may. *Vide 1 Vern. 230. 2 Chan. Ca. 214. Silb. 98. Proceed. in Chan. 411.*

A commissioner may be a witness, but it is material he should be examined before any other witness. *Vide 1 Vern. 369.*

An arbitrator may, *1 Vern. 157, 158.* Members of a corporation cannot. *Vide 1 Vern. 254. 2 Vern. 317.*

A wife cannot against her husband; unless in case of extreme necessity. *Vide 2 Chan. Ca. 39. 2 Vern. 79.*

A bankrupt's wife cannot be examined against her husband to prove his bankruptcy; but may, touching a discovery of his effects. *Vide 1 Will. 611.*

The bankrupt himself cannot be examined touching his own bankruptcy, by *stat. 5 Geo. Ibid.*

If an executor in trust renounces the executor's part, and lets another take out administration with the will annexed, he may be a witness. *Vide 3 Will. 182.*

A defendant by order may examine the *prochein amy*, but not one of the plaintiffs. *Vide Moseley 312. pl. 172.*

*Note: That if a plaintiff wants to examine a defendant as a witness, he must obtain an order by motion or petition for that purpose, which order is of course, and must be served on the adverse clerk in court; also the defendant may obtain the like order to examine a co-defendant as a witness for him; but all these orders are upon suggestion, that the defendant is not concerned in point of interest in the matters in question, and they are never granted but with a clause of (saving just exceptions to the other side); and this must be made at the hearing of the cause; and this order for examining a defendant must be produced at the commission-office, or to the examiners, when the defendant attends to be examined, without which he cannot be examined; for it is by virtue of that order they are impowered to examine him, and they cannot do otherwise on a petition to examine a defendant. *Vide Petitions.**

It is the settled practice, that one defendant's answer cannot be read as evidence against another defendant; and therefore if you want his evidence, you must apply by petition or motion for him to be examined.

When copies of notices are admitted as evidence. *Vide 2 Kern. 613.*

The copy of a deed inrolled for safe custody, admitted as evidence. *Vide 2 Vern. 471. 2 Vern. 591. S. C.*

Confessing a matter by answer, sufficient evidence. *2 Vern. 380. Vide 1 Vern. 452. S. P.*

A settlement made pursuant to marriage articles, evidence that all treaties were resolved into that. *Vide 1 Vern. 369.*

A purchaser who buys in a precedent incumbrance, not obliged to prove the actual payment of the money. *Vide 2 Vern. 279. and vide 1 Vern.*

An injured party's oath, good in *odium spoliatoris*. *Vide 1 Vern. 207, 308. S. C. cited.*

One witness against a defendant's answer not sufficient. *Vide 1 Vern. 161. 3 Cha. Ca. 123. S. P. Vide 2 Vern. 554.*

The oath of the party is ever looked upon in equity to be as good as the oath of a single person.

Where the whole proof of any matter arises from the defendant's answer, the answer must be taken intire, and no part of it impeached by any other evidence. *Vide Lucas's Reo. 405.*

Note : It often may happen, that the court may ground a decree upon the oath of a single witness, attended with other circumstances to corroborate it, as where the answer of the party appears to be notoriously falsified, by which means it comes to lose that credit which otherwise it would and ought justly to have.

In what cases a parol or collateral evidence will be admitted to explain, confirm, or contradict what appears on the face of a deed or will. *M/s. Cases.*

To shew that the testator intended his wife and executrix should have the personal estate exempt from debts and legacies. *2 Vern. 252. and vide 1 Chan. Ca. 196. 2 Vern. 80, 337, 625.*

A. devised particular lands to his executors to be sold for payment of all his proper debts, and gave directions to the person who drew the will, to give all his *personal* estate to his executors ; but by mistake that was omitted, though proved by the person who drew the will. *Harcourt C. decreed the executors to account for the*

The Modern Practice of the

the *personal estate*, saying, *he must construe the intent of the testator out of the words of the will and not upon parol evidence.* *Abr. Eq. Vol. 2 p. 415. c. 5.*

Where *parol evidence* touching the testator's intention is not to be admitted, and why. *Vide 3 Will. 353.*

Parol evidence of the person who drew the will, admitted to shew what the testator intended to pass by a devise of his household goods. *Vide 2 Vern. 517.* Admitted to shew, that grandchildren born after the will should take. *2 Vern. 378.*

Parol proof allowed of a man's intention in a will, where the question was, if a legacy should be a satisfaction of a debt due from testator to the legatee. *2 Vern. 593.*

Parol evidence, where to explain on implication in a will or deed, or upon a declaration and promise, have been allowed in this court. *M/s. Ca. in Chan. 8 Vin. Abr. 195. pl. 24. 11 Vin. Abr. 153. pl. 71. Docksey v. Docksey, Hil. 6 Ann. Ibid. Will. Rep. 111. Gilb. Eq. Rep. 11.*

When a paper is produced by one party as a *charge*, the other may read any thing contained in it as a *discharge*. *Barnard Rep. in Chan. 128.*

Where a testator has given instructions for his will, and before it could be executed, died; the instructions, and not the draught according to the instructions, ought to be proved, for they are the will, and not the draught. *M/s. Ca. in Chan. 2 Vern. 647. pl. 577.*

Parol evidence admitted, to shew that the devisee promised the testator to pay an annuity. *2 Vern. 506.*

It is always admitted to ascertain the person or the thing described, *2 Vern. 593.*—To oust an implication, *2 Vern. 648, 736. S. P.* Parol proof

proof admitted, to shew that a legacy greater than a debt due to the legatee, was not in satisfaction of the debt. 2 Vern. 593, 594. Abr. Eq. Vol. 2. p. 415.

If *A.* purchases in the name of *B.* *A.* may be admitted to prove that he paid the purchase money, and so make it a resulting trust, or trust by implication of law for himself. 1 Vern. 366.

An entry in the book of a steward of a manor, and parol proof by the foreman of the jury, was admitted as good evidence, that a *feme covert* surrendered her whole estate, although the surrender upon the roll, and the admission thereon, was but of a moiety. 2 Vern. 547.

A master examined a witness thrice to a matter of account, and the depositions were suppressed. 2 Chan. Ca. 79.

One defendant cannot move to strike another defendant out of the bill. who has never been served with process in order to make him a witness, but plaintiff may; and a defendant may have an order to examine such defendant, saving just exceptions. Gilb. Rep. in Eq. 183.

A co-plaintiff, though but a trustee, cannot be examined as a witness for another plaintiff; but if he had been made a defendant, (then the trust had been upon oath) he might, upon disclaiming all interest, be a good witness. 1 Vern. 230.

If an interrogatory be leading, that is sufficient to suppress the deposition. 2 Fern. 472. yet after interrogatories and the depositions of a witness thereon had been suppressed because the interrogatories were leading, and then publication passed; and the court being moved, that new interrogatories might be drawn and settled by the master, for the examination of this witness, whose evidence was very material, though the practice was admitted to be always against it.

it, and it was urged to be of dangerous consequence; yet one precedent being produced to this purpose, and the interrogatories which had been suppressed being such as might be drawn by many other counsel, without any apprehension of their being leading; the court, to permit the party to have the benefit of his witness's testimony, ordered new interrogatories to be put in, and settled by a master for his re-examination, *Fein.* 1718. *Eq. Caf. Abr.* 232. *pl.* 3. *Gilb. Eq. Rep.* 140. *Pr. Ch.* 493.

Though the general rule is, that after publication, no new witness can be examined, nor a witness before examined re-examined; yet upon special circumstances set forth by motion and *affidavit*, the rule may be dispensed with. *1 Chan. Ca.* 228. *2 Chan. Ca.* 75. *1 Chan. Ca.* 25.

On motion for leave to examine after publication passed, on making the usual *affidavit* of not having seen the depositions, &c. *the Lord Keeper* declared, that in such a case, the other side should be at liberty to examine at large, as well as cross-examine the witnesses, produced by the party who made the motion. *1 Vern.* 253.

If interrogatories are exhibited in the examiner's office, and witnesses examined thereon, either party may, without any order for that purpose, exhibit new interrogatories for further examination of the same or other witnesses; but when a commission is issued, no new interrogatories can be exhibited before the commissioners, without motion and leave of the court. *Pre. Ch.* 386. *Eq. Caf. Abr.* 233.

The same principle as to the validity of a witness holds in equity as at *common law*. For example: If a man be rendered infamous in law, as by an infamous judgment, or wants discretion and understanding, his testimony is to be rejected. And the cases where the party is concerned in interest,

interest, though never so small, have usually prevailed, unless in special instances ; and herein it must be considered, whether their interest is so great as it may be presumed to make them partial, or not.

As to evidence in general, the usual course in this court is by depositions, for no witnesses *viva voce* are allowed at the hearing, except by special order. And there being the same question in both causes, and the defendant's defence being the same, the depositions in a former cause by order of court shall be read against him. But depositions in another cause, in which the matters in question were not in issue, shall not be read. So depositions taken in a suit betwixt other persons are not to be given in evidence ; for he had no opportunity to cross-examine them. So depositions taken in a cause, where the plaintiff's father was a party to the suit, being in all matters the same, his father being only tenant for life, those depositions could not be read against him ; for the advantage ought in all cases to be reciprocal. And where a cause is dismissed, the matter of it not being proper for equity to decree, yet the fact in this cause proved, may be used as evidence between the same parties, whenever it shall come in question again. But when a cause is dismissed, not upon this ground, but for irregularity, so that in truth there was never regularly any such cause in court, and consequently no proofs, those proofs cannot be used ; for proofs cannot be exemplified without bill and answer, nor can they be read at law, unless the bill upon which they were taken can be read. No depositions ought to be allowed which were not taken in a court of record. And they are like examinations of witnesses ; so that although the defendant may read what part he will, yet the other side may read the whole afterwards.

Note :

Note: *Exhibits proved by depositions must be shewn at the hearing, if the party would have any benefit by them.*

Depositions of witnesses taken in *Ireland*, allowed good evidence in *Chancery* here. *Gilb.* 16, 18.

A witness demurred to an interrogatory as not pertinent, but disallowed. 1 *Vern.* 165.

A commission to examine witnesses cannot be executed in term time but by order of the court for that purpose, nor within *twenty miles* of *London*. *Mfs. Cases of Pract.*

After a rule is given for passing publication on a joint commission being returned, an order (by motion or petition) may be obtained to enlarge publication without any *affidavit*, (but the same is not to hinder the plaintiff from setting down his cause). If the rule for passing publication is expired, or the same passed, an *affidavit* must be made by the clerk in court, solicitor, and the party. *Ibid.*

Though you have examined some witnesses on a joint commission, you still may have occasion to examine others in town. If so, it is necessary, and you may, agreeable to the practice of the court, enlarge the time for passing publication. *Ibid.*

If publication has passed, and you have not heard read or seen the depositions taken, you are not obliged to file your set of interrogatories in the examiner's office, but only such as you may have occasion for in town, or otherwise you would pay for copies twice over, but then they must be such as were exhibited at the commission. *Ibid.*

When the replication is filed, either side (till publication is passed) may examine such witnesses as they think proper. *Ibid.*

When

When the depositions are published, either party may file exceptions or articles in the examiner's office against the credit of any of the witnesses, but if both parties examine a witness, they thereby establish his credit. *Ibid.*

ORDERED that in all cases of a cross bill filed after the original cause has been proceeded on, motion to enlarge publication should be special on notice, in order that the court may be able to judge of the necessity, from circumstances and not of course, as is usual where the original cause has not been proceeded on. *Vide Vezey, Vol. 2. p. 336. pl. 1110.*

If a commissioner is to be examined as an evidence, he must be sworn and examined by the rest of the commissioners, before he acts as a commissioner. *Vide Gilb. Hist. of Chan. p. 138.*

The court expects the best evidence to be given the nature of the thing in issue between the parties admits of. *Vide Vezey, vol. 1. p. 505.*

On objection to competency, a deposition is never read; if to credit only, it may be read, and the matter left to the consideration of the court. *Vide Vezey, vol. 2. p. 221.*

The deposition of one defendant cannot be read in evidence for another, as being concerned in interest, and as a decree might be against him. *Vide Vezey, vol. 2. p. 219.*

The reason of the court permitting the party to examine a witness *de bene esse*, is either from a contempt of the party in not answering, and thereby preventing the joining of issue, or else where the party is in danger of losing his witness by sickness, &c. but if the witness should afterwards be examined in chief, his deposition *de bene esse* shall fall to the ground, having answered the whole purpose for which it was made. *Cann v. Cann. Vid. W. Peer Wms. vol. 1. p. 568.*

One witness is not sufficient, if denied positively by defendant's answer. *Vide Vezey vol. 1. p. 97.*

Where plaintiff examines but one witness against defendant's answer, the answer must be a positive denial *in toto*, and the matter must rest singly thereon. *Vide Vezey vol. 1. p. 97.*

Witnesses are not to be examined by commissioners within *ten miles* of *London*, being deemed within the circuit of the court, and so within the cognizance of the examiner. *Gilb. Hist. & Pract. of Equity, p. 128.*

If one commissioner obstructs another in his duty, or examines irregularly, he may certify such misbehaviour to the court without *affidavit*. If the complaint comes from the party injured, it must be supported by *affidavit*, or the court will not take notice of it. *Ibid.*

Witnesses are to be paid by the person or persons, plaintiffs or defendants, who produces them. *Ibid.*

The best way to compell a witness to attend to be examined is to serve him with a *subpœna ad testificand.* and also serve him with a summons signed by two commissioners, of the time and place where he is to attend to be examined; and if he does not attend after being so served, the court, on application, will order an *attachment* to issue against him, unless he comes up to town at his own expence to be examined before an examiner. *Ibid. p. 129. Pract. Reg. in Chan. p. 89, 90.*

If a solicitor, clerk in court, or other person goes about to tamper with or suborn a witness, on complaint made to the court of such procedure, and on examination of the matter on oath, they will order him to stand committed. *Vide Gilb. Hist. & Pract. of Equity, p. 143.*

If

If a witness is properly *subpœna'd* to attend to be examined, and he refuses to attend, on certificate of this matter from the examiner, as that the interrogatories are filed, he will be ordered to stand committed, unless he attends, and is examined in *four days* after notice. *Ibid. p. 145.*

OF PASSING PUBLICATION in a CAUSE.

It is that power or liberty which is given the six clerks, or clerks in court, either by rules or order of court, or by consent of parties, to shew the depositions openly, and to give out copies of them.

When both parties have examined such witnesses as they think proper, and are ready to go to hearing, the clerks in court on both sides may pass publication by consent; it is done by signifying the same in one of the *rule books* in the six clerks office, on which publication immediately passes. Or where witnesses are examined in court by the examiners, they may give each other rules for publication; *viz. first an ordinary rule*, to produce witnesses, and then *another rule* for a day to shew cause why publication should not pass: If the witnesses are examined on both sides, on a commission, *one rule* only is sufficient; and the time given by such rule is a week, which being expired, and no good cause shewn to the contrary, publication passes.

Note: *Either party that has examined, and would have publication pass, may give the rule.*

The cause being at issue, and one side having examined witnesses, but the adverse party having not, nor had a commission the other party

Q

is

is to give him *first* a *rule* to produce witnesses, and after that a *rule* to pass publication; and if the other side want to examine, they may petition or move the court, and obtain an order to enlarge publication, and for a commission to examine, if in the country; or if in town, they may examine them in the examiner's office; but if they do not examine them within the time limited for enlarging publication, then publication passes: These rules for publication are proper to be given where witnesses are examined in court for the plaintiff, or *ex parte* by commission, or where none are examined on either side, to exclude the adverse party from examining.

After examination of witnesses, publication may be stayed or enlarged, by motion or petition, on reasonable cause shewn.

The court, on cause shewn, and sometimes on a bare motion, will enlarge publication; but it must be on notice, and on good reason offered to the court, and on *affidavit* shewing the reason why the party could not examine his witnesses sooner; and it is seldom or never done where it is to put off the hearing of the cause; but where the cause is not set down, or where the party is not served with a *subpœna* to hear judgment, there the court will enlarge publication on applying for it. In some other cases they will do it, though the cause is set down, and the party served with a *subpœna* to hear judgment; but this is when it is shewn to the court that it is not possible for the cause to come on very soon, and the court will expect the party to appear *gratis* to hear judgment on *six days* notice to his clerk in court, and pray no day over, and will often oblige him to take no advantage for want of parties at the hearing: This forwards the plaintiff; for if a defendant is made at the hearing,

decree cannot be made absolute till the next succeeding term. If the party who moved to enlarge publication, will not agree to appear *gratis*, he is often denied his motion, it being deemed by the court an application for delay.

Publication being actually past, and the depositions delivered out, if the adverse party moves to enlarge publication, he must offer good reasons on *affidavit* of some material witnesses, and the reasons why they could not attend and be examined before publication passed.

In this case the party must make oath, and so must his clerk and solicitor, that they have never seen, read, nor been informed of the contents of the depositions taken in the cause, nor will they, &c. till publication is duly past; and on such *affidavit* it is usual to enlarge the publication, and give the party opportunity to examine witnesses; but he is limited to a time, and so as not to put off the hearing: and where that is not the case, it would be hard to drive defendant to hear his cause without proof.

The publication of depositions taken *de bene esse*, is when the party is either beyond sea, and not returned, or is dead; in which case, on producing and proving the register of his death, an order may be had by petition or motion for publishing his depositions, and the certificate of the death of the witness must be annexed to the petition. It cannot be done without such order; and the party must shew he died before he could be examined in chief; and the court will not only order the depositions to be published, but to read him as a witness at the hearing, saving just exceptions; and notice is always to be given to the adverse party hereof. This notice is to prevent surprize, and to give him an opportunity

The Modern Practice of the

nity to object as he shall see occasion. If the witness be beyond sea, and not returned, there must be an *affidavit* of his situation, and that the party has not heard from him of such a time, nor does he know whether he is living or dead; and in this case there will be a like order as in the case of a witness who died before he could be examined in chief.

Note: Rules are entered with the register thro' the cause in the following manner, together with the date when entered, and the clerk in court's name; they are to be entered in term-time only.

FORM of RULES.

A day is given to the defendant to answer.

A day is given to the defendant to make a better answer.

A day is given to the defendant to produce witnesses.

A day is given to the defendant to shew cause why publication should not pass.

A day is given to the defendant for passing publication upon a joint commission.

The foregoing rules must also be entered in the rule book belonging to the fix clerks, *where the cause originally began*, though the clerk in court, who enters them, should be of another division; and after they are so entered in the house-book, the same are also to be entered with the register as aforesaid; for which 1s. 4d. is paid, and then notice thereof is given in writing to the adverse clerk in court.

When a rule is given to pass publication on a joint commission returned; an order, before that rule is expired, may be obtained (*on petition to the master of the rolls without any affidavit*) to enlarge publication, but not to hinder setting down the cause.

Publication being past, the depositions copied and delivered out, if either party is minded to examine to the credit of any of the witnesses, the way is, (*for the rule of evidence is the same in equity as at law; if the party cannot be good evidence in law, no more can he be in equity*) they must file objections, or articles so called, in the examiner's office, which must contain in substance the objections made to the reputation of the witness; as in case of felony, burglary, pillory, perjury or forgery, or any other criminal case, that would disable the party from being a good witness at common law: Or these articles may be founded on the party's leading a lewd life, or being a common drunkard or swearer, or of ill repute and character in his neighbourhood; a common vagabond, a man unknown, or no abode, or such like. Though these latter objections seldom come to any thing; for notwithstanding all this, the man is a legal witness, and the court will hear his evidence, and judge of the *probability* or *improbability*. Accordingly these articles being filed, and a certificate from the examiner that they are so, the court, on application by motion or petition, or indeed it may be done without, will permit the party to examine witnesses thereon; and the other party is to support the credit and reputation of his witnesses, and may examine accordingly *toties quoties*, and their depositions must be published as in other cases.

CASES of PRACTICE.

If plaintiff and defendant examine a witness, neither can afterwards object against reading his deposition, for they have by the examination established his evidence; accordingly, such matters as are examined to in the original cause after publication passed cannot be examined to in a cross cause. *Vide Moseley p. 382.*

After the defendant has been examined on interrogatories, and publication passed, the plaintiff ought not to have a commission to examine witnesses, in order to falsify the defendant's examination, it tending to multiply suits. *Vide W. Peer Wms. vol. 3. p. 413.*

After publication and examination known, the court will not give either side leave to examine a witness. *Frederick v. Frederick, vide W. Peer Wms. vol. 1. p. 727.*

OF SETTING DOWN the CAUSE for HEARING.

THE necessary rules being given by your clerk in court and out, your solicitor may set down your cause for hearing before the Chancellor or Master of the Rolls, the term next after publication; but, if necessary, on obtaining a special order the same term. If the plaintiff's solicitor neglects to set down his client's cause the term next after publication passed, it may be set down by the defendant's clerk in court, the term next following such neglect.

In this *procedure* no steps are to be taken by either party to hasten a cause to a hearing out of the

the usual course of the court ; nor can the cause be entered for hearing with the Register, without your clerk in court first obtaining the six clerks certificate that the pleadings are filed.

The six clerks usually give notice to the sworn clerks, when they intend to set down causes, on which such sworn clerks apply to their respective six clerks, shewing them the depositions published, and leaving with them in writing a short abstract of the nature of such cause or causes as they intend to set down to be heard. The clerk in court charges the solicitor for this business 1*l.* 5*s.* if the cause is set down at the *Rolls*, and 1*l.* 10*s.* if set down before the *Chancellor*. The charge differs if the cause is set down by the *Register*, and in that case you must obtain the six clerks certificate, and deliver the same to the Register ; having the certificate as his voucher, he will set down the cause, and make you a note for grounding the *subpæna* to hear judgment, which when you apply at the *Subpæna*-Office for a *subpæna*, you annex to the *præcipe* for the same. The *subpæna* is made returnable three or four days before the day appointed for the hearing.

Note : *All causes set down for hearing are entered with the Register, so are all pleas, demurrers, exceptions to reports, &c. ordered to be set down for hearing. The Register keeps an office-book thereof, which is kept in the Register-office, and may be inspected by the solicitors and clerks in court on both sides. They receive all orders for setting down causes in due time, or else they will be put off; and also orders for adjourning causes.*

OF THE SUBPÆNA TO HEAR JUDGMENT.

The cause being set down with the *Register* as before directed, your clerk in court or solicitor applies at the *Subpæna*-office for a *subpæna* to hear judgment.

How this writ is to be served.

Having obtained this writ, it is to be served in the same manner as a *subpæna ad respond. viz.* if only one defendant, it may be served personally, by giving him the body under seal, or giving him the label, and at the same time shewing him the body of the writ under seal of the court. If the party cannot be personally served, the solicitor or his clerk may leave the body of the *subpæna* under seal at the party's house or lodging, with one of the family, *viz.* his wife or servant, man or maid, keeping the label. In this case, it becomes necessary to caution the person who serves the *subpæna* to take down the name of the person with whom he leaves the *subpæna*, in order to state the same in the *affidavit* of service. If there are more defendants than one, you must serve as many as possible with labels, and shew them the body under seal, and leave the body with the last defendant.

Note: The clerk who serves the subpæna, when both that and the labels are served on some or one of the defendants, must make a copy of the label in order to enable him to draw his affidavit of service of subpæna.

*The Form of the Affidavit of Service of Subpœna
to hear Judgment.*

In Chancery Between I. H. Complainant,
and
K. H. Defendant.

E. E. clerk to Mr. P. P. of, &c. solicitor for
the plaintiff in this cause maketh oath, That he this
deponent did, on the——day of——last past,
personally (or as the case may be) serve the said
defendant with a subpœna issuing out of, and under
seal of this honourable court, by which said sub-
pœna the said defendant was required to appear in
this honourable court the——day of——
now last past, to hear judgment the——day
of——aforesaid, at the suit of the said I. H.
the complainant, by delivering the body of the said
subpœna to the said defendant under seal as afore-
said.

E. E.

Sworn, &c.

If the defendant lives within twenty miles of London, it must be served ten days before the time to hear judgment; in a short vacation, ten days before the return; but if the defendant lives above twenty miles, then it must be served fourteen days before the time to hear judgment.
Vide Ord. Chan. p. 116.

When to be
served in a
town-cause,
and when in
a country-
cause.

If the plaintiff's solicitor gets cause set down for hearing, and does not serve the defendant with a subpœna to hear judgment, and the defendant's solicitor attends, and the plaintiff does not proceed to hearing the cause, the cause will be struck out of the paper without costs on either side; but if the plaintiff's solicitor serves

the defendant with *subpœna*, and the defendant's solicitor makes and files an *affidavit* of the service of such *subpœna* on his client, and that the cause was in the paper, and the plaintiff's counsel, when the cause comes on to be heard, does not open the bill, then on reading the defendant's affidavit of such service as aforesaid, the court will dismiss the plaintiff's bill with costs to be taxed.

If the cause be set down by the defendant, and the plaintiff does not appear, the defendant can take no advantage of it, unless the *subpœna* to hear judgment appears to have been served on the plaintiff. If the plaintiff refuses to appear and open his bill, on reading an *affidavit* of service of the *subpœna* to hear judgment, the court will dismiss the bill with costs to be taxed.

It is customary, if the party who has a cause to set down for hearing, is not ready to hear it at the day, but desires it may stand over to a farther day, he must pay the other party the costs of the day, if the court thinks fit to indulge a farther day. Yet when a cause is set down at the defendant's request, if the plaintiff (*not being served with process to hear judgment*) and his counsel attend, and the defendant with his counsel do not, the plaintiff shall have no costs, as he was not compelled to appear without service of a *subpœna* to hear judgment, and the defendant might chuse whether he would go on to have the cause heard, or not.

Note: It is customary, and also most prudent to have an affidavit of service of the subpœna to hear judgment ready at the hearing, so that service may be proved if the defendants should not attend; but this affidavit is sometimes not filed till after hearing; for if the defendants attend it is useless: If there be the least suspicion of the defendant's counsel not appearing

appearing at the hearing, the affidavit of serving the subpoena ought to be filed before the hearing; for the court may refuse to give judgment for want of such affidavit being filed.

Hardwicke Chan. Allowed service of a *subpœna* to hear judgment on a person, who acted as solicitor for one of the defendants in the cause, though such solicitor said he knew not where to find his client, to be good service. In this case, the defendant's clerk in court was not to be found, nor any one attending at his office on his behalf, nor at the defendant's; but the plaintiff's solicitor had found out the defendant's last place of abode. In this matter his lordship observed, as orders for service are pretty much discretionary, no harm could arise by allowing of such service, but ordered, that a copy of the order should be left with some person in the house where the defendant lived last. *Vide Vesey, vol. 2. p. 23.*

If a cause is adjourned over for want of parties, and the defendant is served with an order, yet he must be served with a *subpœna* to hear judgment. *Vide Moseley, p. 226.*

OF HEARING a CAUSE before the CHANCELLOR, or MASTER of the ROLLS.

ON obtaining an order (*by consent*) of the parties, the defendants may appear, answer and go to hearing, they may do the same without an order, provided they do not break in on the common and usual practice of the court, because the time for passing publication cannot be altered by consent without an order first obtained for that purpose.

The Modern Practice of the

The cause being set down will come on to be heard in its course. The Register usually, the evening before a *cause-day*, makes out a paper of the causes intended to be heard; there are generally *twelve* causes put into the paper for hearing; a copy of the cause-paper is stuck up in the *Register-office* and *six clerks office*. You may likewise search the Register's-book to see how your cause stands.

The cause being in the paper, it behoves the respective clerks in court and solicitors (having previously given their briefs to counsel) to attend the court with their pleadings in the cause, that the same may be ready when called for.

Note: It is necessary for the solicitor to take especial care, that his clerk in court gets all the pleadings signed by the respective six clerks, or the court will not permit them to be read at the hearing.

The manner of hearing a cause in this court, when both parties appear.

The cause being called on, and the parties appearing, one of the plaintiff's junior counsel states the case with the matter in issue, and in a short manner touches on the proofs. They then proceed to read the pleadings, *viz.* first on the part of the plaintiff, then on the part of the defendant; the counsel on both sides debating the merits of their respective clients; but the plaintiff's counsel concludes the arguments; on which the court pronounces the decree, the minutes of which are taken down by the Register, and frequently read to the court to avoid mistakes.

Note: Either party may take a copy of the minutes from the Register, if it is apprehended he has made any mistake, or the court has been led into an error from any wrong information. This
step

Step must be taken by motion or petition to the court to rectify the minutes.

On the *affidavit* of service of the *subpœna* being read, the cause goes on, *viz.* the bill is opened, and the beginning of the defendant's answer read; and if matter appear for the plaintiff, the court will make such decree as prayed by his counsel. In this case, a day is always given by the court for the defendant to shew cause against the decree. The decree being drawn up, passed and entered with the Register, the plaintiff's solicitor sues out a *subpœna* against the defendant to shew cause against the decree.

When the defendant's counsel does not appear at the hearing.

This *subpœna* is always made returnable in term, and in *eight days*, and should be served personally on the defendant (if possible); if not, it must be done by leaving the body under seal at his house or lodgings. There is no fixed time established for the service, nor how many days notice the defendant is to have. If the defendant intends to shew cause, he must first pay the plaintiff's solicitor his costs, and produce a voucher from him that he has paid the same, and then he may petition for the cause to be again set down to be heard; but if he submits to the decree *nisi*, then on *affidavit* of service of the *subpœna* made and filed, and a certificate from the Register, that no cause is shewn, the plaintiff moves to make the decree absolute, which is a motion of course.

When subpœna to shew cause against a decree must be made returnable, and how served.

Note: When there are cross causes between the parties, they may be brought on together at the request of either party. If the answer in the last cause comes in before the hearing of the first cause, it is common to move at the same time, that the depositions taken in the second cause may be read on hearing the first cause; and those taken in the first cause

cause may be read on hearing the second or cross cause.

If a necessary defendant is beyond sea, on an *affidavit* made thereof by the plaintiff, and that he does not know whether he is alive or dead, the court on motion will make an order, that the plaintiff may proceed against the other defendants without prejudice, and afterwards make a decree without bringing such absent defendant to a hearing. *Vide Vern. p. 487.*

When a decree is made in a cause, it may be referred to a master to see whether it was set down irregularly for a hearing. *Vide Moseley, p. 44.*

As to the DISMISSION of CAUSES.

A Dismission is the sentence of the court, whereby the plaintiff's bill is ordered to stand dismissed, and is adjudged unfit for the cognizance of the court. It often happens on the hearing of a cause for want of proper parties to the suit, a dismission for want of parties is sometimes granted with costs, and sometimes without. The distinction made by the court is, where the parties omitted are really interested in the suit, and have a right to controvert the plaintiff's title, and draw the cause to a further examination, the bill ought to be dismissed with costs. Where the parties omitted to a suit are to be added merely for form-sake, the cause may be adjourned on payment of the costs of the day, and the bill amended, and proper parties added, &c.

Before the defendant has appeared to the plaintiff's bill, the plaintiff may dismiss the
same;

same ; the same after appearance, and before answer, or after answer, and before the parties have examined witnesses. If the plaintiff dismiss his own bill, or the defendant cause the same to be dismissed for want of prosecution in due time. According to the rules of the court, the plaintiff must, by *stat. 4 & 5 Ann. c. 16.* for amendment of the law, pay full costs to be taxed by the master.

If a dismissal of a suit be decreed on a full hearing, and drawn up, signed, and inrolled, it may not be altered by any motion or order afterwards made for retaining the cause, but only by bill of review ; nor shall a new bill be admitted, but on *affidavit* of new matter, (as in case of a bill of review) and a special order of court obtained for that purpose.

Note : A probable cause of suit may induce the court to spare costs where a plaintiff's suit is dismissed on the hearing ; otherwise full costs is ordered.

These costs are to be taxed by the master, to whom the same is referred by the court, and his report of such taxation must be procured by the party when, without confirmation of the report ; the same being first filed with the Register, you may take out a *subpœna* for costs, and if the same are not paid on service of *subpœna*, process of contempt shall issue as in other cases.

How costs are obtained on dismissal of suit.

OF MAKING DECREES.

THE decree is the final order of the court, determining the right of the matters in question between the parties. It is pronounced in

The Modern Practice of the

in open court by the *Lord Chancellor, Lord Keeper, or Master of the Rolls*, and minutes of such decree are taken by the Register then sitting in court, who afterwards usually reads the same to the court, that it may be corrected or amended if found necessary.

Note : *A decree may be altered on proper application in the term it is pronounced, without a re-hearing. Vide 7 Vin. Abr. 400. pl. 25.*

How to be
drawn up by
the Register.

The solicitor must carry to the Register a brief of the pleadings in the cause, (usually that given to the senior counsel in the cause) who from thence draws up the decree in form. He likewise sends a note to the clerk in court, or solicitor on the other side, to advise him thereof, that he may take a copy of the decree, if he thinks proper, and attend the passing of the same. The defendant's clerk in court or solicitor may, if he thinks proper, call on the Register, and mark his decree-book for a copy which the Register makes in consequence of such order. When the decree is drawn up, the parties having got and perused their copies, and returned the same to the Register, he issues a note of the time when he will pass such decree, a copy whereof is and must be served on the clerk in court for the adverse party, who remits the same to the solicitor. This step is taken, in order that if either party has any objections to make to the decree, they may be made by attending the Register before the same is passed.

The decree being passed, the solicitor carries the same to the entering Register to be entered, which must be done in *six months* from the time pronounced, after which the decree may be signed by the *Lord Chancellor, Lord Keeper, or Master of the Rolls*, in order that the same may be

be inrolled, which must be done within *six months*, or the party must prefer a petition in order to get it inrolled *nunc pro tunc*. The same practice holds in all other orders of the court which are not entered in due time.

If either party thinks himself oppressed by the determination of the court, he may by petition to the *Lord Chancellor* or *Master of the Rolls*, (as the case may be) procure a re-hearing. This petition is usually preferred to the Chancellor. This *petition of appeal* must be signed by two counsel, signifying they conceive there is good ground for such application, on which an order is usually made, on the petitioner's depositing 10*l.*; or, if the party thinks proper, he may appeal from the decree of this court to the House of Lords.

CASES OF PRACTICE.

It is a rule in this court, that when a decree is entered by *consent*, the *merits of the cause* shall never be afterwards inquired into, unless there be an objection that the word *consent* be struck out of the order. *Vide Cases in Equity, Abr. p. 279.*

After the pronouncing the decree, a *caveat* may be entered by either side, to stay the signing and inrollment of the decree. The effect of this *caveat* is, it stays the signing and inrolling for *twenty eight days* after the same is presented to the *Chancellor* to be signed and inrolled, and notice given by his lordship's secretary to the clerk in court for the adverse party. *Vide Will. Reports, vol. 1. p. 609.*

The

The Modern Practice of the

The Lord Chancellor for the time being will enforce the execution of a decree, though made by a prior Chancellor. *Vide Chan. Reports, vol. 2. p. 127.*

Where a suit happens to be discontinued by reason of the death of either party before the decree is inrolled, the proceedings are to be revived by a bill of revivor.

Where a decree is inrolled, and a party dies, or a female plaintiff marries, the decree and proceedings must be revived by *subpœna scire facias*.

Where a decree is not signed and inrolled, a bill of revivor must be brought.

OF INROLLING DECREES:

WHEN the decree is signed by the Lord Chancellor, or Master of the Rolls, the solicitor or clerk in court carries the same to the clerk of the chapel of the Rolls, who, according to the length of the decree, gives out so many rolls as will inroll the same. He usually writes on the last sheet of the decree, (which is called the docquet) the day and year, and signs his name thereto, as a voucher that he has delivered out such rolls. The plaintiff's clerk in court presents the decree to be ingrossed. When the inrollment has been carefully examined, with the docquet of the decree, the plaintiff's clerk in court carries the same to the Roll's chapel, and the clerk there will receive such ingrossment, and gives a receipt for the same if required. The docquet and inrollment are to remain there for any one to inspect, or take a copy if necessary, paying the clerk of the chapel for the search and copy.

Note :

Note: Signing and inrolling decrees is not encouraged, because it tends to lead the parties into great expence in case of mistakes, &c. The court finding the inconveniences attending a precipitate signing of decrees is the reason of their giving liberty for entering caveats, without assigning reasons for so doing. This prevents the inrolling a decree for a month. Vide Vezey, p. 326. pl. 160.

A decree that is not signed and inrolled cannot be pleaded. Vide Vezey, vol. 2. p. 577.

OF EXECUTING DECREES.

FOR the purpose of inforcing obedience to a decree, you are first to get the same signed and inrolled. When done, serve the party who is to perform the same with the writ of execution of the decree, by shewing the same to the party, under the seal of the court, and delivering to him a true copy thereof. If he pays no obedience thereto, on affidavit of the service thereof being filed, the plaintiff may proceed to take out all the processs of contempt, as attachment, proclamation, commission of rebellion, &c. against him. Vide Head Contempt under interlocutory matters.

AN ACCOUNT *of the Fees due to the particular Officers of this Court, for Business and Attendance, as settled by an Order made in this Court by Lord Chancellor Hardwicke, bearing Date the 28th Day of November 1743.*

MASTERS IN CHANCERY.

THAT the masters or their clerks do not demand or take any greater fees or rewards for the business done, or to be done in their respective offices, than the fees or rewards following, *viz.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For every oath, affirmation or attestation upon honour —	0	1	0
For taxing costs for the plaintiff's not filing his bill, or not proceeding to reply; or for the defendant's not appearing in due time —	0	2	0
For taking the acknowledgment of every deed to be inrolled —	0	2	0
For the caption of every recognition for each conusor —	0	2	0
For the examining exemplifications by two masters; to each master for every skin of parchment	0	2	0
For every report or certificate made upon orders before hearing	0	10	0
For every report or certificate after hearing, or in matters of lunatics, bankrupts or infant trustees, or mortgages to convey, and in			
			other

	<i>l.</i>	<i>s.</i>	<i>d.</i>
other matters referred to them, where no cause is depending in court — — —	1	0	0
For every summons — — —	0	2	0
For allowing and signing every ad- vertisement to be put in the <i>Ga- zette</i> — — —	0	10	0
For ingrossing one part of every deed allowed by the master, each skin — — —	0	10	0
For allowing and signing every deed, recognizance, account or other matter allowed and signed by the master — — —	0	2	6
For signing and certifying every ex- hibit proved before a master	0	2	6
For copies of draughts of conveyan- ces to be settled by the master, and of depositions, interrogato- ries ingrossed for examining the parties, and of examinations eight pence a-side, to be paid by the party requiring the same	0	0	8
For copies of draughts of convey- ances to be settled by the master, and of deeds brought before the master, and of depositions, inter- rogatories ingrossed for examin- ing the parties, and of examina- tions, eight pence a-side, to be paid by the party requiring the same — — —	0	0	8
For copies of draughts of reports, charges, discharges, bills of costs, accounts, objections, and of sche- dules of writings, and other mat- ters brought before a master, to be paid by the party requiring the same, six pence <i>per side</i> — — —	0	0	6
			For

The Modern Practice of the

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For the return of a sheriff's patent	0	2	6
For an examination besides the oath	0	2	6
For writing every receipt for books, writings, or other things delivered out by a master —	0	2	6
For settling, adjusting and satisfying bills of costs under commissions of bankruptcy —	1	0	0
For subscribing the receipt for trust-money re-invested in <i>South-Sea</i> stock or annuities paid off, pursuant to act of parliament	0	1	0
For expunging scandal or impertinence out of every record	0	2	6
For striking a jury from each party	1	0	0

When a master is requested to go out of his office to attend any person to administer an oath, or do any matter belonging to his office, a reasonable recompence ought to be made such master for his trouble and loss of time.

THE CLERK'S FEES.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For drawing and transcribing every report or certificate —	0	5	0
For drawing and ingrossing every recognizance with the condition	0	5	0
For writing each bidding for estates before a master — —	0	2	6
* For writing the <i>jurat</i> of <i>affidavits</i> taken in matters not depending in court, as also the caption of every recognizance —	0	0	6
For attending the court with deeds and writings each day —	0	6	8
			That

That the masters and their clerks do observe and perform the several rules and regulations following, *viz.*

In all copies of draughts of reports, charges, discharges, bills of costs, accounts, objections to draughts of reports, and schedules of writings, and other matters brought before a master. The bodies of such copies as are written without a column of figures are to contain fifteen lines in a side, and six words in a line, except the titles, which are to contain four words in a line.

Articles of accounts to contain fifteen lines in a side, and four words in a line, besides the column in figures on the right hand, and dates and times in figures in the left hand column.

Copies of accounts containing numbers, as of *South-Sea* and other bonds in the public companies or the like ; and copies of accounts, and of schedules of accounts, consisting of more than one column of figures, being rendered very obscure, and in some cases unintelligible ; if such numbers and figures be wrote in words at length, therefore that such copies may be understood by preserving the numbers and columns, the same are to be wrote in figures according as figures are used in the originals, or draughts of the accounts or schedules of accounts so copied.

In copies of bills of costs, the year of every term to be wrote in figures by way of title ; other dates and times to be wrote in figures, but not in the margin on the left hand, which perplexes the taxations of such bills.

All deeds allowed by a master are to be fairly ingrossed by his clerk, or some person employed
by

by him, and that with such dispatch as may create no delay to the suitors.

Any person shall be at liberty to take a copy of a report without the schedule, or of the schedule without the report. And in cases where distinct demands of several parties, creditors, are comprized in one report, any person is to be at liberty to take a copy of so much of the report or schedule as relates to any distinct or separate demand.

THE OFFICE OF REGISTER OF THE COURT OF CHANCERY.

That the Register and his deputies, and clerks, do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, *viz.*

l. s. d.

For drawing all orders for each side
3*s.* which is to contain not less
than twenty-four lines in a side,
and seven words in a line, one
with another (except the title,
which is to be four words in a
line one with another) dates and
sums to be in figures as here-
tofore, *per side* — —

0 3 0
0 0 6

For the entry of each order *per side*
For all orders whereby agreements
signed by the parties or their
clerks in court, are made orders
of the court, 3*s.* *per side*, to be
paid by the party drawing up the
order, as in other cases, and 3*s.*
per side by the other party, on
applying for a duplicate thereof,

but

but the whole fee of 6 <i>s.</i> <i>per</i> side	<i>l.</i>	<i>s.</i>	<i>d.</i>
is not to be taken of any one party	0	3	0
For entry of all such orders, 6 <i>d.</i> <i>per</i>	0	0	6
side			
For copies of all orders, exceptions			
and petitions, for the first side 1 <i>s.</i>			
6 <i>d.</i> and for every other side 1 <i>s.</i>			
each side to contain not less than			
twenty lines, and not less than			
six words in a line, one with ano-			
ther (except the title which ought			
to be as above). In this <i>item</i> is			
contained the Register's fee for			
signing	0	1	0
For filing every report, certificate,			
and award	0	0	4
For the copies of all reports, for the			
first side 1 <i>s.</i> 6 <i>d.</i> and for every			
other side 1 <i>s.</i> the body to con-			
tain the same number of lines and			
words as in the fifth <i>item</i> <i>per</i> side	0	1	0
For copies of all minutes taken by			
the Register 1 <i>s.</i> 6 <i>d.</i> for the first			
side, and 1 <i>s.</i> for every side after,			
to be wrote as the copies of orders			
are to be wrote	0	1	0
For entering a cause for hearing,			
(except those set down by the six			
clerks, for which nothing is paid)	0	1	0
The senior Deputy-Register at-			
tending the Lord Chancellor has			
the privilege of setting down			
eight causes in every term; and			
the senior Deputy-Register at-			
tending the Master of the Rolls			
has the privilege of setting down			
six causes every term; for setting			
down. of each of which causes			
twenty shillings	1	0	0

R

For

The Modern Practice of the

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For making of notes of the causes which stand for hearing, for grounding the <i>subpœna</i> to hear judgment ———	0	0	8
For every decree pronounced	0	5	0
For every dismissal on hearing a cause ———	0	0	4

The Register receives for the Master of the
Rolls, for every decree or dismissal 6*s.* 8*d.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
To one of the four deputies for his hand to all certificates —	0	1	0
For filing every election —	0	0	4
For a search in the old books for any order or decree for every year	0	0	4
For entry of all attachments and proclamations, for each —	0	0	2
For all rules of course to answer, re- ply, produce witnesses, and for publication, for each —	0	0	4
For entry of all appearances on contempts ———	0	2	10
For a bill of costs for want of a bill filed in time —	0	0	4
For all copies of attachments, pro- clamations, commissions of rebel- lion, &c. for each —	0	0	4
For entry of all pleas and demurrers	0	1	0
For the clerk's drawing and writing all certificates —	0	0	6

This 6*d.* is paid for searching and examining
the books of orders, as well as for the drawing.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For poundage on paying out deposits made on filing of exceptions, re- 4			hearings,

	<i>l.</i>	<i>s.</i>	<i>d.</i>
hearings, appeals and bills of review, one shilling <i>per</i> pound	0	1	0
For examining all orders and reports, either with the clerk of the entries, or clerk of the reports, or custody of the old or new books to be used as evidence at law, <i>2d. per side</i>	0	0	2
For every exhibit proved <i>viva voce</i> in court, and marked by the Deputy Register	0	2	6
For stamping printed copies of briefs and letters-patent, and telling out and telling in again after the collection <i>2 s. 6 d. per hundred</i>	0	2	6
For entering of all commissions to take answers, or examine witnesses <i>ex parte</i>	0	0	8
But if it be a joint ordinary commission, then	0	1	4
For entry of all commissions to take answers, to examine witnesses in perpetual memory <i>ex parte</i> , only	0	2	0
But if it be a joint commission in perpetual memory to hear and determine	0	4	0
For the copy of the order for the commission, if it be required	0	0	4
For the entry of all amerciaments	0	1	0

That the register, his deputies and clerks, do observe and perform the several rules and regulations following, *viz.*

In copying of schedules of deeds, writings and accounts annexed to reports and certificates, the dates are to be in figures in one column, and the sums in figures in another column; but where dates or sums occur in the body of orders,

R 2

reports,

The Modern Practice of the

reports, certificates, or of such schedules as aforesaid, the same are to be copied in words at length, and not in figures; and any suitor or other person shall and may be at liberty to take a copy of a report without the schedule, or of a schedule without the report; and in cases where distinct demands of several parties or creditors are comprized in one report, any suitor or other person shall and may be at liberty to take a copy of so much of the report or schedule, as relates to any distinct or separate demand.

And whereas it has been usual, where mistakes have been made in drawing up of orders, for the Register's clerks to take *six pence* a-side for the writing the same over again; it is ordered, that if any mistakes for the future are committed by the Register, or their clerks, in drawing up orders, so as to occasion new copies to be made thereof, the suitors shall not be obliged to pay any thing to the Registers or their clerks for such new copies. But if the mistakes are occasioned by the parties, or their clerks in court, or solicitors, in such case the Registers may take *six pence* a-side for transcribing the same.

And it is hereby declared, that the Registers are not intitled to be paid for copies of orders made on hearing causes by consent, or for the copies of any other orders, decretal or interlocutory, unless such copies are required by the parties.

And it is further ordered, that in recitals contained in orders, the following rules be observed, *viz.*

First, That in original decrees and orders made on hearing of causes, the recitals previous to the exhibits read, be of the substance and scope

scope only of the pleadings tending to the points in controversy upon which the decree is founded, and be made in the most concise manner, and not to contain any recitals immaterial to the points in question.

Secondly, That in orders made on re-hearings and appeals, where the first order is affirmed generally, nothing be recited previous to the ordering or decretal part of the former order on hearing, which ordering or decretal part may be fully recited, if the petition of re-hearing or appeal complains of the whole order. But if such petition complains only of part of the order, then no more thereof is to be recited than is complained of, or what necessarily relates thereto. Nor is more of such petition to be recited than the points complained of, and no recital is to be made of the reasons or allegations of counsel therein assigned. But in cases where the first order is varied, the scope and substance of so much of the pleadings only as is material, and tending to the points varied, is to be recited in the most concise manner.

Thirdly, That in orders made on the coming in of the Master's report, or in equities reserved, nothing be recited previous to the ordering part of the original order, except such matter as necessarily leads and gives light to the order made on such reports and equities reserved, and that in the most concise manner; nor is more of such original order to be recited than what relates to the matters or points upon such occasion brought before the court.

Fourthly, That in orders made on ordering pleas or demurrers, where the plea or demurrer is over-ruled, the order is not to contain any recital of the substance thereof, or of the plead-

The Modern Practice of the

ings, but when the same is allowed intirely or in part, proper recitals may be made under the restrictions contained in the first rule touching orders made on hearings.

Fifthly, That in orders made on hearing petitions, the recitals are to contain no more than a short state of the material facts on which the prayer of the petition is grounded.

THE OFFICER OF REGISTER OF AFFIDAVITS.

That the Register of affidavits, his deputy or clerk, do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, *viz.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For filing every affidavit with or without schedules, or other papers thereto annexed —	0	0	4
For registering every affidavit, for each side — —	0	0	4
For the copy of every affidavit, for each side — —	0	0	4

The first side to contain nineteen lines, and every other side seventeen lines, and six words in each line, except the title of the cause and schedules of accounts annexed to such affidavits, which are to contain four words in a line, besides the column of figures on the right hand, and dates and times in figures on the left hand.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For the Register or his deputy's hand, when required — —	0	1	0
For			

l. s. d.

For a certificate under the Register, or his deputy's hand, when re- quired — —	0	1	0
For every search for an <i>affidavit</i> , for each term 6 <i>d.</i> with the liberty of reading it over if found	0	0	6

If the *affidavit* is found, and a copy taken,
nothing is to be paid for the search of that term.

l. s. d.

For searching for and taking an ori- ginal <i>affidavit</i> off the file, in order to attend the Lord Chancellor or Master of the Rolls therewith, or to be made use of in any court	0	6	8
For attending therewith at the Lord Chancellor's, or at any of the courts at <i>Westminster</i> or in <i>London</i> , each time — —	0	6	8
For examining the copy of every <i>affi- davit</i> with the original, in order to make use of such copy as evidence in any other court than the court of Chancery — —	0	1	0
For carrying an original <i>affidavit</i> by the Register or his deputy, to any assize, for each day, including horse-hire and expences —	1	1	0
For trouble, attendance, and taking security to return an original <i>affi- davit</i> to the office, when by order of the court such original <i>affida- vit</i> is directed to be delivered to an associate or clerk of assize, to be made use of at the assizes, and which is now become the com- mon practice to save the expence to the suitors of it's being carried			

The Modern Practice of the

thither by the Register or his de-	l. s. d.
puty. — — —	0 6 8

That the Register of *affidavits*, and his deputy or clerk, do observe and perform the following regulations, *viz.*

Whereas it has been usual upon filing *affidavits* with schedules, certificates, or any other papers annexed thereto, that every such annexed paper has been charged for as a distinct *affidavit*, and the suitors have paid for the filing of the Register's or his deputy's hand to each of such annexed papers, several and distinct fees, according to the number of such papers; it is ordained, that all papers annexed to an *affidavit* be considered as parts thereof; and that the suitors in every such case do pay no more than one fee for the filing, and for the Register's or his deputy's hand.

THE OFFICE OF EXAMINERS.

That the examiners, and the examining and copying clerks, do not demand or take any greater fees or rewards for the business done or to be done in their offices, than the fees or rewards following, *viz.*

THE EXAMINERS FEES.

	l. s. d.
For the examination of every deponent, defendant or delinquent	0 2 0
For copies of all manner of depositions, interrogatories, or other pleadings which they have warrant to copy, for every sheet, contain-	ing

	<i>l.</i>	<i>s.</i>	<i>d.</i>
ing fifteen lines, and six words in a line — —	0	0	10
For all manner of certificates whereunto their hands are required	0	2	0
For the examination of any copy or book of depositions which is to be given in evidence in another court with the original	0	6	8
For the examination of every deponent unto whom the examiner is required to travel, if it be near at hand — —	0	6	8

If far off, or the examiner has occasion to go often, what more the party shall think fit whom it concerns.

THE COPYING CLERKS FEES.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For their labour in writing a note of every deponent's name, title and place of abode, to be left with the adverse party's clerk in court, and shewing every deponent at such clerk's seat, and getting every deponent defendant or delinquent, sworn — —	0	0	6
For copies of all manner of depositions, interrogatories, or other pleadings which they have warrant to copy, for every sheet containing fifteen lines, and six words in a line — —	0	0	2

For their attendance in court when required, with any deeds or writings left in their custody, as also for their labour in searching for any record

The Modern Practice of the

cord a reasonable satisfaction, according to such their attendance and labour.

	l. s. d.		
For their labour in writing all manner of certificates, to which the master-examiner's name is required to be set	—	0	0 6
For their labour in examination of any copy or book of depositions, which is to be given in evidence in another court, with the original		0	3 4
For their labour to get any deponent, defendant or delinquent, sworn abroad, if near at hand	—	0	3 4

If far off, what more the party whom it concerns shall think fit, according to such attendance.

That the examiners and the examining and copying clerks do observe and perform the several rules and regulations following, *viz.*

The examining and copying clerks are not to take any gift or gratuity whatsoever of the suitors, their clerks in court, solicitors or agents for office-business done within office-hours. Nor shall they take any such gifts or gratuities for office-business done out of office-hours, unless such gift or gratuity be first settled and allowed by the right honourable the Master of the Rolls, upon application to be made for that purpose; and they are constantly to attend during the whole time of office-hours.

And in regard the examining clerks are not intitled to any fee whatsoever, and their employment is of great trust, and requires great integrity, skill and constant attendance, they are to have

have such an allowance from their principals as they may be able to subsist on, without being liable to any temptations to betray the secrets of the office, or to be guilty of any exactions; and the rather, because the misbehaviour of the examining clerks may effect the office of the examiners by whom they are nominated.

And whereas by an order of the twenty-first day of *October* in the fourth and fifth years of the reign of King *Philip* and Queen *Mary*, it was ordered, that the examiner should not deliver copies of the depositions of witnesses by them examined, without copies of the interrogatories, it is ordered, that the said order be varied in this particular, that neither party shall be obliged to take an office-copy of his own interrogatories.

THE SIX CLERKS OFFICE.

That the six clerks, sworn clerks, and writing clerks, do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, viz.

THE SIX CLERKS FEES.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Out of all copies of bills, answers, pleas, demurrers, replications, rejoinders, depositions, interrogatories and other records usually dispatched in their offices, 4 <i>d.</i> per sheet	0	0	4
Out of all exemplifications of bills, answers and proceedings in the same office, 14 <i>s.</i> per skin	0	14	0
Out of every commission of rebellion	0	6	0

R 6

For

The Modern Practice of the

For examining and signing every decree of dismissal	—	o	17	o
For every prisoner brought up to the court by <i>habeas corpus</i> to the two fix clerks then attending the court, one fee of	— —	o	3	4
For every assignment of a guardian for infants in court, to the two fix clerks then attending, one fee of	— —	o	3	4
For the custody of every bond entered into by order of the court to the senior fix clerks not towards the cause	— —	o	3	4
For every search for a record transmitted into the record-room; which is not usually transmitted thither until the same has been filed by the space of twelve months or upwards, but during that time lies in the respective fix clerks study, for the sworn clerks and writing clerks to resort to without fee	— —	o	1	o
Out of every cause carried on in the petty bag, for every term, wherein any rule or rules is or are entered with them, as other matters done by them	— —	o	3	4
To the aiding fix clerk for his attendance on his Majesty in council with the sheriff's roll, when a person is pricked down for sheriff and is afterwards excused, and another named in his room		I	I	o

The six clerks, as comptrollers of the hana-per, are intituled unto the several fees following, viz.

Eor

l. s. d.

For comptrolling and making up the
accounts of the hanaper yearly,
the sum of — — 10 0 0

For ingrossing the comptrolment-
book to be transmitted to the Ex-
chequer, the yearly sum of 13 6 8

The six clerks are intituled unto (besides the
parchment) out of the profits of the hanaper the
following fees, viz.

l. s. d.

For inrolling of all warrants, where-
by any patents, commissions, licen-
ces, pardons, leases or other grants
whatsoever that pass by and under
the great seal (except such as are
herein after particularly men-
tioned) after the rate for every
skin so passing the great seal 1 0 0

For inrolling of all warrants, for all
commissions of peace, of sewers,
commissions of appeal from the
Admiralty, commissions of policy
of insurance, and commissions *de*
lunatico inquirendo — 0 1 8

For the inrolling of all warrants for
all other commissions of appeal,
and commissions of adjuncts 0 3 4

For the inrolling of all warrants for
the custody or the revocation of a
custody of a lunatick or idiot, for
every of them — 0 3 4

For the inrolling of the warrants for
every presentation, donation or
revocation, to any rectory, vica-
rage, deanry, archdeaconry,
chancellorship, treasuryship or
dignities to any metropolitical,
cathedral or collegiate church, or

for

l. s. d.

for any canonship or prebend, in any of the said churches, or for the mastership of any hospital or other ecclesiastical living, or for the grant of any presentation or presentations, <i>pro unico vel pluribus vicibus</i> thereunto, and for every dispensation and <i>commendam</i>	0	3	4
For the inrolling of the warrants for every denization or commission of bankrupt	0	3	4
For the writing of every exemplification of all such records as they have a right to exemplify, after the rate of every skin	1	6	8
For every sheriff's patent, writ of assistance, writ of discharge, <i>dedimus potestatem</i>	1	7	0
For ingrossing the patent, writ of assistance, writ of discharge, <i>dedimus potestatem</i> , the three oaths, docquet, parchment, and attending the sealing	1	14	4
For the recognizance in a <i>Welch</i> patent, more	0	2	6

THE SWORN CLERKS AND WRITING CLERKS FEES.

For filing every bill, and for the rule to answer, including the term-fee and stamps	0	5	4
For an attachment	0	0	6
	l.	s.	d.
Whereof the stamp is	0	1	6
Entering with the Register, and duty	0	1	2
Seal	0	0	6
Sworn clerk's fee	0	2	10
	0	6	0
	For		

For every proclamation and di-				
<i>stringas</i>	—			
		<i>l.</i>	<i>s.</i>	<i>d.</i>
		0	6	4

Whereof the stamp duty is		<i>l.</i>	<i>s.</i>	<i>d.</i>
Entering with the Register,		0	1	6
and duty	—	0	1	2
Seal	—	0	0	6
Sworn clerk's fee		0	3	2

	0	6	4
--	---	---	---

For a commission of rebellion				
		<i>l.</i>	<i>s.</i>	<i>d.</i>
		0	19	4

Whereof stamps on the writ				
and docquet are		0	2	6
Entering at the Register,				
and duty	—	0	1	6
Hanaper	—	0	4	4
Lord Chancellor's purse-				
bearer	—	0	1	0
The fix clerks	—	0	6	6
Sworn clerk's fee	—	0	4	0

	0	19	4
--	---	----	---

For a sequestration				
		<i>l.</i>	<i>s.</i>	<i>d.</i>
		0	15	4

Whereof the stamp duty is		0	1	6
Seal	—	0	0	6
Sworn clerks fee	—	0	13	4

	0	15	4
--	---	----	---

For a <i>Ne exeat Regnum</i>				
		<i>l.</i>	<i>s.</i>	<i>d.</i>
		0	14	10

<i>viz.</i> Stamps	—	0	1	6
Lord Chancellor's secretary				
for signing	—	0	2	6
The seal	—	0	0	6
The sworn clerk's fee		0	10	4

	0	14	10
--	---	----	----

For

		<i>l.</i>	<i>s.</i>	<i>d.</i>
For a <i>Habeas Corpus</i>	—	0	14	2
		<i>l.</i>	<i>s.</i>	<i>d.</i>
<i>Viz.</i> Stamps	—	0	5	0
Lord Chancellor's secretary				
for signing	—	0	2	0
Seal	—	0	0	6
Sworn clerk's fee	—	0	6	8
		0	14	2
For a <i>dedimus potestatem</i> to take an				
answer	—	0	9	4
		<i>l.</i>	<i>s.</i>	<i>d.</i>
<i>Viz.</i> Stamps	—	0	1	6
Seal	—	0	0	6
Sworn clerk's fee	—	0	7	4
		0	9	4
For every special <i>dedimus</i> by order of				
court	—	0	12	8
		<i>l.</i>	<i>s.</i>	<i>d.</i>
The same charges paid out	—	0	2	0
The sworn clerk's fee	—	0	10	8
		0	12	8
For a commission to examine witnes-				
ses with the schedule of oaths	—	0	15	4
		<i>l.</i>	<i>s.</i>	<i>d.</i>
The stamps are	—	0	1	6
Seal	—	0	0	6
The sworn clerk's fee	—	0	13	4
		0	15	4
For joining in commission to exa-				
mine witnesses, to the clerk who				
joins in such commission only	—	0	6	8
For every special commission for di-				
viding lands, and ascertaining				
boundaries, or otherwise special				
by order of court	—	0	19	8
			The	

The stamps and other out-goings are included in this 19 s. 8 d.

			<i>l.</i>	<i>s.</i>	<i>d.</i>
For every writ of execution upon an order	—	—	0	6	8
If an order of one side	—	—	0	6	8
If more	—	—	0	13	4
If longer, than <i>per skin</i> (besides stamps) 1 <i>l.</i> 6 s. 8 d.	—	—	1	6	8

Each skin to contain at least sixteen sheets, and each sheet ninety words

			<i>l.</i>	<i>s.</i>	<i>d.</i>
For every common injunction			1	2	8
<i>Viz.</i> Stamps	—		0	2	6
Signing by Lord Chancellor and Master of the Rolls			0	6	4
The Seal	—		0	0	6
Sworn clerk for making the writ	—		0	13	4
			<hr/>		
			1	2	8

For every special injunction more than for the common injunction			0	3	4
For every term the cause is in agitation, the sworn clerks on each side of the cause are intitled to a term-fee of	—		0	3	4
For the appearance of every defendant who appears separately by himself	—	—	0	3	4
If two or three defendants appear by the same clerk, reckoning husband and wife as one, the fee for appearing is but	—		0	3	4
But if more than three, and not exceeding six defendants appear together, the appearance fee is			0	6	8
					If.

l. s. d.

If more than six the appearance fee is 0 10 0

And so in proportion to the number of defendants, reckoning 3 s. 4 d. for every three defendants, man and wife still computed but as one.

l. s. d.

For copies of all bills and answers,
depositions and other proceedings,
for each sheet, containing fifteen
lines, and six words in every line 0 0 10

l. s. d.

Viz. Stamps — 0 0 2
To the six clerk 0 0 4
To the sworn clerk 0 0 4

0 0 10

For a rule to produce witnesses, or to
pass publication and notice there-
of, including the stamp duty 0 4 0

For setting down a cause for hearing
before the Lord Chancellor or
Master of the Rolls, by their six
clerk, according to the right they
claim for so doing, for each cause
to set down — 1 5 0

For drawing and inrolling decrees
and dismissions (if not exceeding
one skin) — 1 13 4

l. s. d.

Out of which is paid to the
six clerk — 0 17 0

But if the decree or dismissal be longer than one skin, then for drawing every sheet 8 d. and 8 d. *per* sheet inrolling, each sheet to contain sixteen or seventeen lines ; and in such case the suitor pays the 17 s. to the six clerk.

For

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For a writ of execution of a decree, for every skin thereof, including the parchment but not the stamps	1	6	8
Each skin to contain not less than sixteen copy-sheets for attending the court on the day of hearing of every cause wherein they are con- cerned — —	0	6	8
And if the cause is more than one day in hearing, then for each day the cause is actually in hearing	0	6	8
For every other attendance in court when required by the proper cli- ent, or his solicitor, but not other- wise — —	0	6	8
For every attendance on a Master on taxing of costs —	0	6	8
For every attendance on a Master on other occasions (except taxing costs) by the direction, or at the request of the proper client or his solicitor, if together with the so- licitor in the cause —	0	3	4
If without the solicitor, then	0	6	8

But note; this fee of 3 *s.* 4 *d.* for any such attendance on a Master, if together with the solicitor in the cause, is only to be allowed by the Masters in taxing costs between the client and his solicitor or clerk in court; but on taxing costs between party and party, no fee is to be allowed to the sworn clerk for any such attendance, together with the solicitor in the cause.

l. s. d.

For entering an appearance for the parties with the Register, accord- ing to any order of court —	0	3	4
---	---	---	---

For

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For signing their consent, as clerk in court, to any petition, agreement or election —	0	3	4
For every certificate to be signed by the fix clerk —	0	2	6
For examining all copies of bills, answers, depositions of witnesses, interrogatories, and other proceedings, with the records in order for evidence, if eighty sheets or under —	0	6	8
But if more than eighty sheets, then after the rate of one penny <i>per</i> sheet — —	0	0	1
For the exemplification of every record (besides the stamps) and vellum, (if writ on vellum) the Master's fee for examining, and sworn clerk's fee for attending to examine, and hanaper fee for every skin thereof 1 <i>l.</i> 6 <i>s.</i> 8 <i>d.</i>	1	6	8
	<i>l.</i>	<i>s.</i>	<i>d.</i>
Out of which is paid to the fix clerk —	0	14	0
To the sworn clerk	0	12	8
	<hr/>		
	1	6	8

Each skin to contain at least sixteen copy-sheets.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For drawing and ingrossing the docket and master's certificate, (besides the stamp which is one shilling) — —	0	3	4
For attending the masters to examine exemplifications that exceed not three skins — —	0	6	8

If

High Court of Chancery.

381

If more, then in proportion to 6 s. 8 d. for every three skins.

l. s. d.

For every writ of assistance to put the defendants into possession, pursuant to a decree

0 16 4

l. s. d.

Out of which is paid for

stamps 0 1 6

Seal 0 0 6

Sworn clerk's fee 0 14 4

0 16 4

For the copies of all deeds, writings, papers, letters and accounts left with any clerk in court, pursuant to an order of court, or referred to in any of the pleadings, for each sheet 4 d.

0 0 4

For every attendance to produce such deed, papers, letters or accounts for the adverse party to inspect if no copy be taken

0 6 8

But if any copy of such deeds, papers, &c. be taken, then nothing is to be taken for inspection or attendance thereon :

l. s. d.

For every *certiorari*, *procedendo* and *supersedeas*

0 8 8

l. s. d.

Viz. duty 0 1 6

Seal 0 0 6

Sworn clerk's fee 0 6 8

0 8 8

That

The Modern Practice of the

That the sworn clerks and writing clerks do observe and perform the several rules and regulations following, *viz.*

That all copies of schedules to answers or other proceedings which contain accounts and inventories be written in three columns; the first or outer column, and the third or last column whereof, are to contain respectively the dates and sums in figures, as they are respectively written in the ingrossment of such schedules, and the middle column to contain four words in a line of the facts or matters charged in such accounts or inventories.

Where any person intitled to privilege of parliament, pursuant to the act of parliament of the twelfth and thirteenth of King *William* the Third, has been served with an office-copy of the bill, such person shall not be obliged to take out or pay for any other copy of such bill upon his appearance thereto.

OFFICE OF THE CLERKS OF THE INROLLMENTS.

That the clerks of the inrollments, their deputies and clerks, do not demand or take any greater fees or rewards for the business done, or to be done in this office, than the fees or rewards following, *viz.*

l. s. d.

For the inrolling of every deed, writing or conveyance for every roll or press, each press containing ninety lines, and each line not less than fourteen words, one with another — —

0 10 0

Viz.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
<i>Viz.</i> to the clerks of the inrollments —	0	5	0
To the deputy-clerks	0	5	0
	<hr/>		
	0	10	0

For every deed inrolled in this office
there is likewise paid — 0 5 4

	<i>l.</i>	<i>s.</i>	<i>d.</i>
<i>Viz.</i> to the Master of the Rolls —	0	2	0
To the deputy-clerk for in- dorsing and certifying	0	3	4
	<hr/>		
	0	5	4

For inrolling every recognizance
without condition — 0 4 0

For inrolling every recognizance
with condition, if short — 0 6 0

But if the condition be long, then according to
the length, in proportion to 10*s.* for a whole
pfeff.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Out of which is paid to the Master of the Rolls for every recognizance	0	2	0

And the residue belongs to the clerks of the
inrollments, or their deputies

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For vacating every recognizance	0	13	4



Viz.

The Modern Practice of the

		<i>l.</i>	<i>s.</i>	<i>d.</i>
<i>Viz.</i> To the Master of the				
Rolls	—	0	6	8
To the clerks of the inrol-				
ments	—	0	3	4
To the deputies	—	0	3	4
		<hr/>		
		0	13	4

TO THE DEPUTY-CLERKS.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For copying any deed, writing or re-			
cognizance inrolled 8 <i>d.</i> per sheet,			
each sheet containing ninety			
words	—	—	0 0 8
For certifying the copy of a deed to			
be a true copy	—	—	0 2 0
For every attendance on the court			
with a Roll	—	—	0 6 8
For every search for a deed inrolled,			
not exceeding one year	—	—	0 1 0
For every search for a longer time			
than one year, for each year after			
the first	—	—	0 0 3

But when the bill is found, the party who pays for the search, is to have liberty of reading it without further fee

THE OFFICE OF THE CLERK OF THE HANAPER.

That the clerk of the hanaper, his deputy and clerks, do not demand or take any greater fees or rewards for the particular matters and things herein after mentioned, done or to be done

done in this office, than the fees or rewards following, *viz.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For a commission of rebellion	0	4	4

	<i>l.</i>	<i>s.</i>	<i>d.</i>
The King	0	2	0
Clerk of the hanaper	0	2	4
	<hr/>		
	0	4	4

A brief or duplicate thereof	0	6	6
------------------------------	---	---	---

	<i>l.</i>	<i>s.</i>	<i>d.</i>
The King	0	2	0
Sealer	0	0	6
Chaff-wax	0	1	0
Examiner	0	0	8
Clerk of the hanaper	0	2	4
	<hr/>		
	0	6	6

A <i>dedimus</i> to the clerk of the hanaper	0	4	6
--	---	---	---

A commission of appeal from the Admiralty	0	7	2
---	---	---	---

	<i>l.</i>	<i>s.</i>	<i>d.</i>
The clerk	0	2	0
Six clerk	0	1	8
Clerk of the hanaper	0	3	6
	<hr/>		
	0	7	2

A commission of policies of insurance	0	7	2
---------------------------------------	---	---	---

	<i>l.</i>	<i>s.</i>	<i>d.</i>
The King	0	2	0
Six clerk	0	1	8
Clerk of the hanaper	0	3	6
	<hr/>		
	0	7	2

		<i>l. s. d.</i>		
A commission of bankruptcy		0	12	6
		<i>l.</i>	<i>s.</i>	<i>d.</i>
The King	—	0	2	0
Six clerk	—	0	3	4
Sealer	—	0	1	0
Chaff-wax	—	0	1	0
Examiner	—	0	0	8
Clerk of the hanaper	—	0	4	6
		<hr/>		
		0	12	6

A commission of bankruptcy renewed ; clerk of the hanaper		—	0	6	3
A <i>superfedeas</i> of a commission of bankruptcy, clerk of the hanaper		—	0	1	0
A commission of inquiry of lunacy or idiocy		—	0	9	2
		<i>l.</i>	<i>s.</i>	<i>d.</i>	
The King	—	0	2	0	
Six clerk	—	0	1	8	
Clerk of the hanaper	—	0	5	6	
		<hr/>			
		0	9	2	

A custody or a revocation of a lunatic or idiot		—	0	14	0
		<i>l.</i>	<i>s.</i>	<i>d.</i>	
The King	—	0	2	0	
Six clerk	—	0	3	4	
Clerk of the hanaper	—	0	8	8	
		<hr/>			
		0	14	0	

An exemplification	—	—	1	8	10
--------------------	---	---	---	---	----

The

l. s. d.

		l.	s.	d.
The King	—	0	16	4
Chancellor	—	0	2	0
Master of the Rolls		0	6	8
Sealer	—	0	0	8
Chaff-wax	—	0	0	8
Clerk of the hanaper		0	2	6
<hr/>				
		1	8	10

Every *inspeximus* from the six clerks

office to the clerk of the hanaper 0 0 4

From every other office, the clerk of the hanaper — — 0 0 4

A commission of appeal or adjuncts 1 7 2

l. s. d.

To the King	—	0	16	4
Chancellor	—	0	2	0
Master of the Rolls		0	2	0
Six clerk	—	0	3	4
Sealer	—	0	0	4
Examiner	—	0	0	8
Clerk of the hanaper		0	2	6
<hr/>				
		1	7	2

A pardon of course for one name 1 8 0

l. s. d.

<i>Viz.</i> To the King		0	16	4
Chancellor	—	0	2	0
Master of the Rolls	—	0	2	0
Six clerk	—	0	3	4
Clerk of the hanaper		0	4	4
<hr/>				
		1	8	0

THE KEEPER OF THE RECORDS IN THE TOWER.

That the said officer or his deputy do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, *viz.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For every particular search, or for several searches relating to the same matter, if made within four terms inclusive — —	0	10	0
For every sheet copied —	0	1	0
For the master or deputy's hand to each copy — —	0	2	0
For examining any old copy under the master or his deputy's hand	0	2	6
For every record carried out of the office to either house of parliament, or to any of the courts of judicature — —	1	0	0

THE PETTY-BAG OFFICE.

That the clerks of the petty-bag do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, *viz.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For every attachment of privilege	0	1	0
For drawing and ingrossing all declarations, pleas and replications, according to the length for each sheet — —	0	1	0
Entering the rule to answer with the fix clerk, and on the roll in the petty-bag — —	0	2	0

For

High Court of Chancery.

389

For entering every peremptory rule to answer, rule to reply, rejoin or join in demurrer —	0	1	0
For entering every common imparlance with the fix clerk and in the petty-bag —	0	1	0
For every special imparlance entered there — —	0	2	0
For drawing and ingrossing every confession of a judgment —	0	2	0
For signing, entering and making up the record of every judgment, if short —	0	10	0
If long, then in proportion to 1l. 6s. 8d. for every skin	1	6	8
For ingrossing the record of an issue or demurrer, proportionably for each skin, 1 l. 6 s. 8 d. —	1	6	8
For every continuance —	1	0	0
For every <i>venire facias</i> to the Master of the Rolls —	0	6	8
For the writ and seal —	0	10	6
For every <i>venire, scire facias</i> and seal	0	5	6
For all special commissions of inquiry, <i>scire facias</i> to revoke letters patent, <i>scire facias ad computandum, audita querela</i> , re-extents, and all other judicial writs	0	12	6
And (otherwise as they may arise in length) for each skin —	1	6	8
For every <i>liberate</i> upon a statute-staple, to the Master of the Rolls	0	13	4
For drawing and ingrossing the writ, entering and filing the extent and statute, and for the seal —	1	0	3
And if very long, after the rate for every skin —	0	6	8
For drawing all special writs, commissions, records of issues or de-			
6 3			murrers

The Modern Practice of the

murrers and pleadings, as traverses, <i>monstrans le droit</i> , and such like for every sheet —	0	1	0
For entering the <i>vacate</i> of every judgment, or statute staple and search — —	0	11	4
For every writ of <i>dedimus potestatem</i> to take the acknowledgment of satisfaction of such judgment or statute in the country —	1	6	8
For ingrossing acknowledgment, and filing every bail —	0	6	8
For taxing every bill of costs	0	2	0
For every <i>certiorari</i> to remove acts of parliament —	0	10	6
For every <i>certiorari</i> to remove records out of any other court	0	7	2
For every <i>mittimus</i> to send such records into any other court —	0	7	2
For the transcript of such records as it may arise in length, each skin	1	6	8
For filing all judicial writs, special commissions, writs <i>de virida et coronator' eligendo</i> , commissions to swear justices of the peace and sheriffs, decrees upon the statute of charitable uses, and all other records, and writs, and for the entry thereof —	0	2	6
For the search of every record (without paying any further fee for taking the record down, or a sight of the same) —	0	1	0
For the copies of all records, for each sheet — —	0	0	8
The officer's hand to the examination of every record —	0	2	0
For drawing and signing every certificate under the officer's hand	0	2	6

For

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For every writ of execution of an order or decree upon the statute of charitable uses —	0	10	6
And as it arises in length, proportionably for each skin —	1	6	8
For every attachment of contempt and proclamation —	0	2	10
For every commission of rebellion	0	18	8
For every injunction —	1	2	6
For every commission to examine witnesses, and for the oaths annexed to such commission, pursuant to an order of court made the ninth of <i>February</i> in the eighth year of <i>King George the First</i>	0	12	10
For every rule for publication, and entering it on the roll —	0	1	0
For every confirmation of a decree upon the statute of charitable uses	1	6	8
If long, then for the drawing each sheet —	0	0	8
For the inrolling thereof, each sheet	0	0	8
For every exoneration of a decree upon the statute of charitable uses	0	6	8
And if long, then for drawing and inrolling as for a confirmation			
For a fee in every cause for every term wherein any business is done in this office —	0	3	4
For the transcript of every record sent into the King's Bench for trial, for each skin —	1	6	8
For the exemplification of any record for each skin —	1	6	8
For the docquet —	0	1	0
For filing the qualification of any member of parliament, pursuant to the statute of the ninth of <i>Queen Anne</i> , the fee is settled by the statute at —	0	2	0

S 4

For

The Modern Practice of the

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For attending the court of Chancery at <i>Westminster</i> with the record of a demurrer, and reading it in order to pay a <i>concilium</i> thereon	0	6	8
For the re-examination of an old copy of any record, for each sheet	0	0	1
For every <i>dedimus</i> to swear a master extraordinary in Chancery, when made out from this office	0	13	4

Every skin for which a fee of 1 *l.* 6 *s.* and 8 *d.* is allowed in this office ought to contain twenty sheets, each sheet consisting of seventy-two words; and all the fees above mentioned are exclusive of the stamp duties.

For attending with any record out of the office, the clerk attending is to be paid a reasonable fee, according to the time of such attendance.

FEES paid at the PETTY-BAG OFFICE for
BISHOPS-PATENTS made out there.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For every <i>conge d'elire</i> for the election of a new bishop, upon the vacancy of any bishoprick, as follows	11	4	6
	<i>l.</i>	<i>s.</i>	<i>d.</i>
To the Master of the Rolls	1	0	0
To the Lord Chancellor's gentleman —	1	6	8
To the clerks of the petty-bag for drawing, ingrossing, inrolling and examining the patent, and for the docqzet	8	17	0
	11	4	6
For the royal assent to such election	12	4	6
			For

High Court of Chancery.

393

	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
To the Master of the Rolls	2	0	0			
To the Lord Chancellor's gentleman —	1	6	8			
To the clerk of the petty-bag for drawing, ingrossing, inrolling and examining the patent, and for the docquet	8	17	10			
	<hr/>					
	12	4	6			
For the patent of assistance and restitution of temporalities				28	4	6
	<i>l.</i>	<i>s.</i>	<i>d.</i>			
To the Lord Chamberlain	5	0	0			
To the Master of the Rolls	7	10	0			
To the Lord Chancellor's gentleman —	1	6	8			
To the chaff-wax —	0	3	4			
To the clerks of the petty-bag, for drawing, ingrossing, inrolling and examining the patent of assistance, and for the docquet, and writs of restitution —	14	4	6			
	<hr/>					
	28	4	6			
For every comptroller's, searcher's, under-searcher's, and King's waiter's patents	—			10	0	0
	<i>l.</i>	<i>s.</i>	<i>d.</i>			
To the Master of the Rolls	0	6	8			
To the Lord Chancellor's gentleman —	1	6	8			
To the clerks of the petty-bag for drawing, ingrossing, inrolling and examining the patent, and for the docquet	8	6	8			
	<hr/>					
35	10	0	0	An		

*An Account of such Business as particularly belongs
to the Senior-Clerk.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For the administering of the oath of admission to the keeper of the records of the Tower, and clerk of the bankrupts, and inrolling the admission —	5	5	0
For inrolling the surrender of every examiner and fix clerk, admission of and swearing in the new one, and making a <i>constat</i> thereof	3	3	0
For swearing the deputy-clerks of the inrolments —	3	3	0
But for the other officers (except solicitors) whose admittances are inrolled in this office —	2	2	0
For making out of every certificate of a peer of <i>Scotland</i> taking the oaths in <i>England</i> to vote by proxy	0	10	0
As for the administering of the oaths in court, the fees are settled by an act of parliament, at	0	2	0
For the writ of summons on the call of a new parliament —	0	7	2
For the commission for the electing sixteen peers of <i>Scotland</i>	5	0	0
For ruling and other petty charges besides vellum —	0	14	6
For settling the precedence of the great officers of state, and the order of the nobility, ingrossing of the pacon, which is the recital of the several writs to each particular Lord, Spiritual and Temporal, that has right of sitting, according to their station, in respect of their great offices or cre-			

ation ;

l. s. d.

ation; together with the several writs of the sheriffs of counties, cities and towns having sheriffs, and to the several *Scotch* districts; and to the Master of the Rolls, the Judges, Serjeants, Attorney and Solicitor General, and Counsel attending upon that occasion

10 0 0

The three clerks of this office are intitled to an ancient fee or allowance out of the hanaper of two rolls of parchment in every term.

THE SUBPÆNA OFFICE.

That the patentees of the said office, or their deputy or deputies, do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, *viz.*

l. s. d.

For every common *subpæna* over and above the stamp-duties, and 6 *d.* paid to the patentees of the Crown, for the sealing thereof

0 2 0

For every common *subpæna* renewed

0 1 6

For every special *subpæna* (to wit) *spa. ad ostendend. causam, scire facias, et ducens tecum*, over and above duty and seal —

0 6 8

For every special *subpæna* renewed

0 3 4

For every loose label —

0 0 6

Out of which fees above mentioned, the present deputy claims, and takes to his own use.

l. s. d.

Out of every *subpæna scire facias et ad ostendend. causam* —

0 5 0

S 6

Out

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Out of every <i>subpœna scire facias et</i> <i>ad ostendend. causam</i> renewed	0	2	6
Out of every <i>subpœna ducens tecum</i>	0	0	4
Out of every common <i>subpœna</i> re- newed	0	0	6
For every loose label	0	0	0

THE SIX-PENNY WRIT OFFICE.

It is hereby declared, that the patentee or his deputy, ought not to demand or take any fee for sealing of writs for privileged persons, or for suitors in *forma pauperis*, or for renewed writs.

THE OFFICE OF CHAFF-WAX.

That the officer called the chaff-wax or his deputy do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, *viz.*

His wages or fee of two pence half-penny a-day, payable by the clerk of the hanaper.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For his salary payable out of the hanaper, the yearly sum of	360	0	0
From the clerk of the hanaper every year, for fewel, oil, and other ne- cessaries for tempering the wax for the Great Seal	—	4	5 4

And one shilling and four pence a day board wages.

From

From the clerk of the hanaper to one of his deputies fifteen pound a-year for travelling charges upon the King's business.

From the clerk of the hanaper the casual fees following, *viz.*

		<i>l.</i>	<i>s.</i>	<i>d.</i>
For every brief	—	0	1	0
For every bankrupt	—	0	1	0
For every exemplification	—	0	0	8
For every presentation	—	0	0	4
For every office for life	—	0	0	4
For every special pardon	—	0	0	4
For every perpetuity	—	0	1	0

And the clerk of the presentations.

For every presentation	—	0	1	0
------------------------	---	---	---	---

From the clerk of the crown in Chancery the casual fees following, *viz.*

		<i>l.</i>	<i>s.</i>	<i>d.</i>
For the creation of a Prince of Wales	—	3	7	6
For the creation of every Duke, Marquis, Earl, Viscount and Baron, each	—	1	2	6
For the creation of a Baronet		0	10	0

From the lessee of the six-penny writ duty 50*l.* a-year by four equal payments at the end of every term, which is granted to the chaff-wax for the time being by King *Charles* the First, by his letters patent, bearing date the eighth day of *October* in the third year of his reign.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
From the said lessee to the six-penny writ duty to the two deputies in			
			this

		<i>l.</i>	<i>s.</i>	<i>d.</i>
this office, at the end of every				
term, each	—	2	0	0

From the Lord Chancellor's purse-bearers the following fees, *viz.*

		<i>l.</i>	<i>s.</i>	<i>d.</i>
For every private seal	—	0	10	0
For every small writ at a private				
seal	—	0	0	3

That the sealer or his deputy do not take or demand any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, *viz.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
From the patentee of the fix-penny			
writ duty, a yearly allowance of	83	6	8

Payable at the end of every term, by equal payments

	<i>l.</i>	<i>s.</i>	<i>d.</i>
From the said patentee to the fix			
penny writ duty, to the deputy			
in this office, 40 <i>s.</i> at the end of			
every term, <i>per term</i>	—	2	0

From the hanaper office four pence half-penny by the day salary, and one shilling and four pence by the day board wages, quarterly.

And for a table, bags, spunges, scar-			
let cloth and other necessaries by			
him provided for the seal	10	15	0

And for a winter livery	—	1	0
-------------------------	---	---	---

And also for riding charges and			
expences in following the great			
seal			

seal into the country (which the
present sealer allows his deputy) *l. s. d.*
15 0 0

Fees which the clerk of the hanaper also
receives and accounts for to this officer.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For a brief — —	0	0	6
For a commission of bankrupt	0	1	0
An exemplification —	0	0	8
Any church preferment —	0	0	6
Office for life or years —	0	0	4
Commissions of appeal —	0	0	4
Special licence for fourteen years	0	0	4
Special pardon —	0	0	8
A perpetuity —	0	0	8

Fees received by the clerk of the crown in
Chancery, which he accounts for to the sealer.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Prince of <i>Wales</i> patent —	3	7	6
For every Baron, Viscount, Earl, Marquis and Duke, each title	1	2	6
For every Baronet —	0	10	0
For every patent when the patentee is sworn in before the Lord Chancel- lor — —	0	5	0
The sealer receives from the purse- bearer, for every private seal	0	7	6
For every small writ sealed at a private seal —	0	0	3
For every presentation from the clerk of the presentations	0	1	0

THE USHER OF THE COURT.

That the said usher or his deputy do not de-
mand or take any greater fees or rewards, for
the

The Modern Practice of the

the business done or to be done in this office,
than the fees or rewards following, *viz.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Four pence half-penny <i>per diem</i> to be issuing and paid out of the hana- per — —	0	0	4½
Twenty shillings for a livery once by the year — —	1	0	0
For laying out of all records of <i>Henry</i> the Seventh's time, and before — —	0	0	6
For laying out of every parliament roll, confirmation roll, judgment roll, fine roll, and every bundle <i>virtute officii.</i> —	0	0	6
For all other records and cancella- tions, for each one —	0	0	4
For carrying out every record or evidence, by the command of the Lord Chancellor or Master of the rolls — —	0	3	4
For every exemplification, sheriff's patent and escheator's patent	0	0	4
For every decree and dismissal signed	0	0	4
For every perpetuity out of the hanaper — —	0	0	4
For every writ of bastardy, for every name — —	0	1	0
At the making of every master of the court, his hood —	0	3	4
At a call of serjeants at law, a livery, and for each oath —	0	3	4
For receiving every parcel of evi- dence into court, entering them into a ledger-book, and for mak- ing a certificate thereof	0	2	0
For delivering out every parcel of evidence — —	0	2	0

For

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For certifying the not bringing in of money or evidence —	0	2	0
For every cause heard at <i>Westminster</i> , if the bill is dismissed, the defendant pays —	0	2	0
If a decree for the plaintiff, the plaintiff pays —	0	2	0
If an issue at law, or an account is directed, each side pays —	0	2	0
For every guardian admitted in court at <i>Westminster</i> —	0	2	0
For every cause heard in court, at the rolls in term time, if the bill is dismissed, the defendant pays	0	2	0
If a decree for the plaintiff, the plaintiff pays — —	0	2	0
If an issue at law, or an account is directed, each side pays —	0	2	0
For every guardian admitted in court, at the Rolls in term	0	1	0
And for all copies made of such evidences as remain in the usher's custody, for every sheet which shall be orderly and unwastefully written, each of which sheets ought to contain ninety words —	0	0	8

THE OFFICE OF PURSE-BEARER.

That the said purse-bearer or his deputy do not demand or take any greater fees or rewards, for the particular matters and things herein after mentioned, done or to be done in this office, than the fees or rewards following, *viz.*

Recepi

The Modern Practice of the

	<i>l.</i>	<i>s.</i>	<i>d.</i>
<i>Recepi</i> fees for patents of honour, each title —	5	5	0
For every remainder —	2	12	6
<i>Recepi</i> fees for grants of charters	5	5	0
<i>Recepi</i> fee for Archbishop's instru- ments, each —	2	12	6
<i>Recepi</i> fee for Baronet's patents	2	12	6
For every remainder —	1	6	6
<i>Recepi</i> fee for Governor's commis- sions — —	2	12	6
<i>Recepi</i> fee for bishop's instruments, deans, prebends and other church preferments, and of all offices and grants whatsoever —	1	6	6

DOCQUET FEES.

Special commissions made out of the petty-bag, each —	1	1	0
Exemplifications and pardons of course, each —	0	10	0
Sheriff's patents —	0	4	0
Deans, prebends, archdeacons, cu- stodies of lunaticks, each	0	3	0
Presentations, commissions of bank- ruptcy, <i>supersedeas</i> of commis- sions of bankruptcy, briefs, writs of inquiry of lunaticks	2	0	0
For every renewed commission of bankrupt — —	0	1	0
Commissions of appeal and rebellion, each — —	0	1	0
Out of every 40 <i>s.</i> received for every private seal — —	0	17	6
Out of the 3 <i>s.</i> received for every writ sealed, when the seal is opened on any other occasion	0	2	0
Entering a caveat —	0	5	0
			For

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For a petition answered —	0	12	6

For filing and copying affidavits, and the manner of writing such copies, the same as is after mentioned under the head of secretary of the commission of bankrupts.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For application for the sheriff's roll, in order for the alteration of a sheriff's name, when a person is pricked for sheriff, and is afterwards excused, and another named in his room —	1	1	0

THE OFFICE OF THE PRINCIPAL SECRETARY TO THE LORD CHANCELLOR.

That the said principal secretary do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, *viz.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For every petition for setting down exceptions, pleas or demurrers	0	10	0
For every petition for re-arguing exceptions, pleas or demurrers	0	12	6
For every petition for setting down a cause for hearing —	1	0	0
For every petition for re-hearing a cause —————	1	5	0

Where the petition is for several pleas or demurrers, or in cross causes, then the fees in all the matters aforesaid are double, and are treble if three.

For

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For a warrant to the serjeant at arms, the messenger or the warden of the <i>Fleet</i> — —	0	15	0
For every petition for a <i>Ne Exeat</i> <i>Regnum</i> — —	0	12	6
For every petition for a letter to any peer of this realm, and for the letter — —	1	5	0
For every reference upon a petition to the Lord Chief Justices or other judges, concerning by-laws	0	12	6
For a petition to have by-laws signed	0	12	6
For a petition for an <i>homine replegi-</i> <i>ando</i> , or touching the custody of an infant, or other matter where no cause is depending — —	0	12	6
For backing every <i>habeas corpus</i>	0	2	0
And every writ of <i>Ne Exeat Regnum</i>	0	2	6
For every petition for a <i>supplicavit</i>	0	12	6
Upon application for the roll, in order to the alteration of a sheriff's name, when a person is pricked for sheriff, and is afterwards ex- cused, and another named in his room — —	1	1	0
For taxing bills of costs upon writs of error in the Exchequer cham- ber — —	1	0	0
For every petition not herein parti- cularised, relating to the proceed- ings in a cause —	0	10	0
For every summons on an order of reference from his Majesty	0		6
For every report on every reference from his Majesty — —	1	5	0
For a caveat — —	0	5	0

For copies of affidavits, according to their
length, the like fees as in the affidavit office.

THE

THE OFFICER OF RECEIVER OF
THE FINES.

That the officer for receiving the fines do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, *viz.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For an order made on hearing the parties —	1	0	0
For an order upon a petition to issue a writ for discharging or electing a coroner or verdurer, and for an undertaking of regular notice, and filing the same on an affidavit	1	0	0
For an order upon any other petition — —	0	12	6
For a <i>caveat</i> — —	0	5	0

For filing and copying affidavits, the same fees and rules already laid down to be observed by the Lord Chancellor's secretary of the commissions of bankrupts, are to be observed by this officer.

For every special <i>dedimus</i> in one county —	0	1	0
If in more counties, for each county	0	1	0
For every renewed <i>dedimus</i> —	0	2	0
For every other renewed writ	0	1	0
For every curfitor sworn in upon death —	20	0	0
For every curfitor sworn in upon surrender —	10	0	0

THE

THE OFFICE OF SECRETARY OF DECREES AND INJUNCTIONS.

That the said secretary do not demand any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, *viz.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For examining a decree or dismissal to be signed by the Lord Chancellor to be inrolled in each cause or dismissal ———	0	7	6
For entering a caveat against such signing, and giving notice thereof to the parties concerned in each cause ———	0	5	0
For Lord Chancellor's order on a petition against signing and inrolling a decree ———	0	12	6
For Lord Chancellor's order on a petition for inrolling a decree after the time limited for inrolling is lapsed, and entering the same in each cause ———	0	10	0
For examining the order for an injunction, with the copy of the writ, and Lord Chancellor's signing the said copy and writ before it passes the seal ———	0	4	4

THE OFFICE OF SECRETARY OF THE LUNATICKS.

That the said secretary do not demand or take any greater fees or rewards for the business done

done or to be done in this office, than the fees or rewards following, *viz.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For every order made upon hearing	1	7	6
For a petition for grant of a custody — —	1	7	6
For a petition for a writ <i>de lunatico inquirendo</i> , or for any other matter, except as above	0	15	0
Entering a caveat — —	0	5	0

For filing and copying affidavits, the same fees and rules already laid down to be observed by the secretary of commissions of bankrupts, are to be observed by this officer.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For a copy of orders made in court, or of petitions, the first side	0	1	6
For every other side —	0	1	0
For setting down every petition for hearing — —	0	1	0

THE OFFICE OF THE CLERK OF THE CUSTODIES OF IDIOTS AND LUNATICKS.

That the said officer or his deputy do not take any fee or reward for attending the seal, hanaper, or clerk of the docquets, with any grant of the person or estate of idiots or lunaticks, or any revocation thereof, for not attending the seal, hanaper, or clerk of the docquets, with any commission of idiocy or lunacy.

THE

THE OFFICE OF SERJEANT AT ARMS.

That the said officer or his deputy do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, viz.

	l.	s.	d.
Travelling each mile	—	0	1 0
Searching each day	—	0	13 4
Caption fee of a Knight	5	0	0
Caption fee of a gentleman or common person	—	3	6 8
Custody fee each day	—	0	13 4
The return of process against a Knight	—	5	0 0
The return of process against a gentleman or common person	—	3	6 8

He is also paid the fee of 3 s. a day out of the hanaper.

THE OFFICE OF MESSENGER OR PURSIVANT ATTENDING THIS COURT.

That the messenger or pursuivant, or his deputy, do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, viz.

	l.	s.	d.
For summoning a new parliament, as to that part of Great Britain, called England	—	176	0 0
And for summoning a new parliament as to Scotland	—	100	0 0
Travelling each mile for all business, except summoning a new parliament	—	—	0 0 6
Searching			

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Searching each day —	0	6	8
Caption fee of a Knight —	2	10	0
Caption fee of a gentleman or common person —	1	13	4
Custody for each day —	0	6	8
Return of a warrant —	1	13	4
From the clerk of the hanaper for every charter that passes the great seal —	0	5	0
From the clerk of the hanaper <i>per diem</i> —	0	3	0
From the assignee of the patentee of the six penny writ duty <i>per term</i> —	0	10	0

THE OFFICE OF SECRETARY OF THE APPEALS.

That the secretary of the appeals do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, *viz.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For entering a caveat against passing a commission —	0	6	8
For an order made on hearing parties —	1	0	0
For an order on any petition —	1	0	0
Office copy thereof —	0	10	0
For filing an affidavit, first side —	0	2	0
For every other side —	0	0	8
For copying an affidavit, first side —	0	2	6
Every other side —	0	0	8
For a copy of a report on reference, touching a commission of review —	2	15	0
For an order on any petition relating thereto —	2	0	0
Office copy thereof —	1	0	0

T

T R

THE OFFICE OF CLERK OF THE APPEALS.

That the clerk of the appeals do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, *viz.*

	l. s. d.
For ingrossing a commission of appeal	2 10 0

Out of which said sum is paid by this officer to the hanaper 1 l. 7 s. 2 d. and to the purse-bearer 1 s.

	l. s. d.
For ingrossing a commission of adjuncts	3 0 0

Out of which is paid by this officer to the hanaper 1 l. 7 s. 2 d. and to the purse-bearer 1 s.

	l. s. d.
For ingrossing a commission of review	5 0 0

Out of which is paid by this officer to the hanaper 1 l. 7 s. 2 d. and to the purse-bearer 1 s.

	l. s. d.
For ingrossing a commission of appeal from the court of Admiralty	1 10 0

Out of which is paid by this officer to the hanaper 7 s. 2 d. and to the purse-bearer 1 s.

	l. s. d.
For ingrossing a <i>pauper</i> commission of appeal, out of which nothing is paid	0 10 0
	If

If any of the said commissions (except
a pauper commission) do very
much exceed the usual length,
more — — —

l. s. d.

0 7 6

THE GENTLEMEN OF THE CHAMBERS
ATTENDING THE GREAT SEAL.

That the said gentlemen of the chambers do
not demand or take any greater fees or rewards
for the business done or to be done in this office
than the fees or rewards following, *viz.*

	<i>l. s. d.</i>
For every Peer's patent by promotion or creation, each title —	6 0 0
Curfitor's fees (that is) swearing into offices — — —	5 0 0
Baroner's patent —	3 0 0
Swearing every curfitor —	5 5 0
Fiat for a Master in Chancery extraordinary —	5 10 0
By-laws passed by any body-corporate rate — —	5 5 0
Small writs every last seal day paid by the lessee of the six penny writ duty — —	3 15 0
Every bishop's patent by the clerk of the petty-bag office	1 6 8
If an archbishop —	2 13 4
Every custom-house patent by the clerk of the petty-bag —	1 6 8
Clerk of the leases for each skin pays	1 6 8
Cause by consent heard	1 0 0
Private attendance —	1 0 0
Petition heard —	0 10 0

The Modern Practice of the

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Guardian admitted in the chamber, and on certain days in court, to wit, seal days and petition days	0	10	0
Out of the forty shillings on every private seal — —	0	5	0
Dispensation or commendam	0	5	0
Papers left for Lord Chancellor's perusal — —	0	5	0

THE OFFICE OF MASTER IN CHANCERY
EXTRAORDINARY IN THE COUNTRY.

That a master extraordinary do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, *viz.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
From every person who shall swear to an affidavit before him. —	0	2	0
For the acknowledgment of every deed acknowledged before him	0	5	0
From every recognizor that shall enter into a recognizance before him — —	0	2	6

If any of these matters are transacted at the place of the officer's residence, or in any market town frequented by him, he is to take no greater fees or rewards than are above mentioned; but if he is obliged to travel for that purpose at the desire of any party, then he may receive a reasonable reward from such party according to the length of his journey.

THE USHER OF THE HALL AT THE
LORD CHANCELLOR'S.

That the said usher do not demand or take any greater fees or rewards for the business done or to be done than the fees or rewards following, viz.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Upon hearing a cause wherein no account or issue is directed	0	10	0
Upon hearing a cause wherein an account or issue is directed	1	0	0
Upon hearing cross causes wherein no account or issue is directed	1	0	0
Upon hearing cross causes wherein an account or issue is directed in one of them — —	1	10	0
When an account or issue is directed in both — —	2	0	0
Upon re-hearing a cause —	0	10	0
Upon re-hearing cross causes	1	0	0
Upon arguing exceptions —	0	10	0
But if exceptions are taken on both sides — —	1	0	0
Upon arguing pleas and demurrers	0	6	0
If a plea stands for an answer with liberty to except, each side pays	0	6	0
Upon admission of a guardian in court — —	0	10	0
Upon swearing a witness <i>viva voce</i> in court to prove any matter	0	1	6
Upon a master's taking an affidavit in court — —	0	0	6

THE CRYER OF THE COURT.

That the said cryer do not demand or take any greater fees or rewards for the business done

The Modern Practice of the

or to be done in this office, than the fees or rewards following, viz.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For every cause heard at <i>Westminster</i> (only) if the bill be dismissed	0	2	6
If a decree for the plaintiff	0	2	6
For an issue at law, or an account be be directed, each side pays 10 <i>s.</i> out of which he receives —	0	5	0
For every guardian admitted in court — —	0	1	0
For calling and amercing a sheriff for not returning the process of the court — —	0	0	4

On a general call of serjeants at law, a livery gown.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
On the coming in of a new master in Chancery —	0	5	0

The Deputy of the Warden of the Fleet, or the Lord Chancellor's Tipstaff attending this Court.

That the said deputy do not demand or take any greater fees or rewards for business done or to be done than the fees or rewards following, viz.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
On every cause that is heard before the Lord Chancellor in term-time only, he is entitled to 1 <i>s.</i> which is paid to him by the door-keeper out of the 10 <i>s.</i> which is the usual fee paid to the door-keeper.	0	1	0
For every day on which he travels to execute any warrant in the country, he is allowed for his expences,			

expences, to be paid him by the party at whose instance the commitment is —

l. s. d.

0 6 8

And for every mile that he travels upon that occasion, his fee is

0 0 6

When a prisoner is removed by *habeas corpus* from the Fleet prison to appear in court, the said deputy is the proper officer to take care of the prisoner, and to conduct him from the Fleet prison to the court of Chancery and back again, the fee is —

0 6 8

THE OFFICE OF DOOR-KEEPER
OF THIS COURT.

That the door-keeper of this court do not take any greater fees or rewards for the business done or to be done in this office than the fees or rewards following, *viz.*

In every cause heard at *Westminster*, if the bill is dismissed, the defendant pays this officer a fee of 10s. which he distributes as follows.

l. s. d.

l. s. d.

To the usher of the Rolls 0 2 0

To the cryer of the court 0 2 6

To the Lord Chancellor's tipstaff — 0 1 0

To the Master of the Roll's tipstaff — 0 0 6

To the court-keeper 0 0 6

To the Register's bag-bearer 0 1 0

His own fee — 0 2 6

0 10 0

T 4

If

The Common Practice of the

If a decree for the plaintiff be given, the like fee of 10 s. distributed as above.

If an issue at law, or an account is directed, the plaintiff and defendant each pay 10 s. distributed in like proportion.

For every guardian admitted in court at Westminster, he receives a fee of 10 s. which he distributes as follows :

To the two six clerks then attending in court	0	3	0
To the usher of the Rolls	0	1	0
To the crier of the court	0	1	0
To the Lord Chancellor's tipstaff	0	1	0
To the Master of the Roll's tipstaff	0	0	6
To the court keeper	0	0	6
To the Register's bag-bearer	0	1	0
His own fee	0	2	0

For every cause heard in court at the Rolls in term time a fee of 7 s. and 6 d. to be divided as follows :

To the usher of the Rolls	0	2	0
To the Master of the Rolls	0	1	0
To the Master of the Roll's tipstaff	0	1	0
To the usher of the hall at the Rolls	0	1	0
His own fee	0	2	6

0 7 6

Fo

For every guardian admitted in court at the Rolls in term-time, he receives a fee of 3s. which he distributes as follows :

To the usher	—	0	1	0
To the porter	—	0	1	0
To the Master of the Roll's tipstaff	—	0	1	0
To the usher of the hall, if in the two winter terms	—	0	1	0
His own fee	—	0	2	0

But in *Easter* and *Trinity* terms, when the Master of the Rolls sits in the chapel, the usher of the hall has nothing out of any cause heard, or guardian admitted in term time, which increases this officer's fee 1 s. in each of the two articles for those terms only.

For every witness examined <i>viva voce</i> , either at <i>Westminster</i> , or at the Rolls	—	0	1	0
For every affidavit sworn before a Master in Chancery sitting in court	—	0	0	6
For every prisoner brought into court by <i>habeas corpus</i>	—	0	2	6
At a general or private call of serjeants at law, for every serjeant then called	—	0	6	8
On the admission of every Master in Chancery	—	0	6	8
For every deed acknowledged in court to be inrolled	—	0	1	0
From his Majesty's Attorney-General, a term-fee of	—	1	10	0

The Modern Practice of the

	<i>l.</i>	<i>s.</i>	<i>d.</i>
From his Majesty's Solicitor-General, a term-fee of —	1	0	0
This officer claims a privilege of setting down one cause every term to be heard before the Lord Chancellor, for which he is paid the usual fee of —	1	0	0
He also claims the like privilege of setting down one cause each term, to be heard before the Master of the Rolls, for which he is paid the like fee of —	1	0	0

THE KEEPER OF THE COURT.

That the keeper of this court do not demand or take any greater fees or rewards for the business done or to be done in this office than the fees or rewards following, *viz.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For every cause heard at <i>Westminster-hall</i> , he receives from the party that prevails —	0	0	6
If an issue at law, or an account is directed, each side pays 6 <i>d.</i>	0	1	0
For ever guardian admitted in court at <i>Westminster</i> only —	0	0	6

THE OFFICE OF CHIEF SECRETARY OF THE MASTER OF THE ROLLS.

That the said secretary do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, *viz.*

Out

l. s. d.

Out of the fees paid by every fix clerk and examiner, at their respective admissions to their offices — 10 0 0

Out of the fees paid by every sworn clerk of the fix clerk's office, and clerk of the petty-bag office, at the times of their respective admissions to their offices — 2 0 0

Out of the fees paid by every waiting clerk attending on the fix clerks, at the times of their respective admissions — 1 0 0

For entering the name of every under clerk, at the time of his entering into articles with any of the sworn clerks of the fix clerk's office, and the date of such articles 1 0 0

For perusing every petition presented to the Master of the Rolls (except those of privileged persons and *paupers*, and for the setting down of causes to be heard by the Master of the Rolls, and for restoring of causes to the paper when struck out, and for adjourning or 're-hearing of causes) writing the order upon it, and presenting the same to the Master of the Rolls for his approbation and signing, for every petition thus signed — 0 5 0

But though such petition shall pray several matters, or though it be in two or more causes between the same parties or some of them, only one fee of 5 *s.* is to be taken, and no more.

THE UNDER SECRETARY OF THE ROLLS.

That the said under secretary do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, viz.

Out of the fees paid on the admission of every six clerk or examiner	—	2	0	0
Out of the fees paid upon the admission of every sworn clerk of the six clerk's office, or clerk of the petty bag office	—	0	10	0
For perusing and writing the order upon and presenting to the Master of the Rolls for his approbation and signature of every petition preferred to him for the admission of a plaintiff or defendant to prosecute or defend <i>in forma pauperis</i> , for every such petition so signed by his honour.	—	0	5	0

But if the petition be to prosecute in one cause, and defend in another, or in several causes, only one fee is to be taken.

For entering the name of such cause or causes, and the order made on every such petition in a book kept for that purpose on every such petition signed by his honour	0	0	6
For entering the name of the cause or causes, and the order made on every other petition signed by his honour,			

	<i>l.</i>	<i>s.</i>	<i>d.</i>
honour, for which the chief secretary takes 5 <i>s.</i> and for perusing the order upon, and presenting such petition in the absence of the chief secretary —	0	0	6
For procuring to be answered and entering the order made on every <i>pauper</i> petition, after their first admittance —	0	1	0
For the like on every petition preferred by any person intitled to the privilege of the court	0	1	0

THE SECRETARY OF CAUSES AT
THE ROLLS.

That the said secretary do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, *viz.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For setting down a cause for hearing and drawing and signing a note to the Register, certifying the same (other than for such causes as are set down by the respective officers having a privilege so to do	1	0	0
The like fee for every petition for setting down a cause for re-hearing — —	1	0	0

For perusing and presenting every petition, and writing the order signed by his honour for the purposes following, the several fees herein after mentioned, that is to say

On

	<i>l.</i>	<i>s.</i>	<i>d.</i>
On every petition for setting down a cause to be heard at the Rolls, in order to have the bills taken <i>pro confesso</i> —	1	0	0
On every petition for setting down a cause <i>ad requisition. defendantis</i> —	1	0	0
On every petition for restoring a cause to the paper which has been struck out thereof —	1	0	0
And if more than one cause to be struck out, then for such cause restored — —	1	0	0
But if any of the business aforesaid be done at the instance of a <i>pauper</i> or privileged person, then 5 <i>s.</i> only instead of one pound	0	5	0

For perusing and presenting every petition, and writing the order signed by his honour, for the following purposes, *viz.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For setting down a cause upon a master's report, or upon an equity reserved, or for further directions 12 <i>s.</i> and 6 <i>d.</i> and if two or more causes, the like fee in each cause —	0	12	6
But if such petition be for a <i>pauper</i> or privileged person, then only	0	1	0
For perusing and presenting every petition, and writing the order signed by his honour for adjourning a cause 10 <i>s.</i> and if the same be in two or more causes, the like fee in each cause —	0	10	0
If a <i>pauper</i> or privileged person, then only 1 <i>s.</i> instead of 10 <i>s.</i>	0	1	0

THE OFFICE OF SECRETARY OF DECREES AND INJUNCTIONS AT THE ROLLS.

That the said secretary do not demand or take any greater fees or rewards for the business done or to be done in this office than the fees or rewards following, *viz.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For presenting the docquet of every decree, or dismissal pronounced by his honour to be signed by his honour, in order to the inrolment thereof, and entering the name of the cause or causes, and the date of the decree or dismissal, and the time of signing the docquet by his honour, in a book kept for that purpose	0	2	6
For presenting to his honour for his signing, and entering the docquet of every injunction granted by his honour	0	2	0

And if a decree be made, or injunction granted in two or more causes wherein the same parties or any of them are concerned, but one fee for all.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For entering a caveat against the signing of any decree or dismissal, and giving notice to the parties concerned	0	5	0

THE OFFICE OF CLERK OF THE CHAPEL OF THE ROLLS.

That the said clerk do not demand or take any greater fees or rewards for the business done or to be done in this office than the fees or rewards following, viz.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For the search of the calendar book, for every year	—	0	1
For the copy of all records in the chapel of the Rolls, for every sheet containing fifteen lines, and six words in each line	—	0	1
For every skin of parchment or vel- lum exemplified, including a fee of 6 <i>s.</i> 8 <i>d.</i> payable to the Master of the Rolls, for each exemplifi- cation	—	1	6

But in every such skin, there ought to be writ-
ten at least sixteen sheets, each sheet computed at
ninety words,

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For every cancellation 10 <i>s.</i> whereof there is due to the Master of the Rolls 6 <i>s.</i> and 8 <i>d.</i>	—	0	10
For the re-examination of every copy written out of the records in the Rolls, for every sheet	—	0	0
For the clerk's hand to all the copies taken from the Rolls	—	0	2
For the attendance with every record out of the Rolls, by order	—	1	0

THE GENTLEMEN OF THE CHAMBERS
ATTENDING THE MASTER OF THE ROLLS.

That the said gentlemen of the chambers do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, *viz.*

l. s. d.

In every cause heard by consent in the Rolls, in which a decree is made

For every cause heard at the Rolls after term.

0 16 0

0 18 0

If the bill be wholly dismissed, the plaintiff is to pay nothing, but the defendant or defendants (if more than one) pay these fees; but if there be a decree for the plaintiff, either for the whole or any part of the demand, and the bill be dismissed as to the other part, then the plaintiff only is to pay them.

If an issue at law, or an account is directed, these fees are paid by both the plaintiff and defendant.

If there be more than one defendant in a cause, there is but one fee to be paid on the part of all the defendants, and if a cause be sent to a master to state any matter specially for the judgment of the court, and no decree pronounced, then no fee is to be paid until the cause comes on again on the master's report.

l. s. d.

Upon a re-hearing, the party who takes the deposit pays to the gentlemen of the chambers

0 8 0

But

The Modern Practice of the

But if the deposit be ordered to be divided between the parties, then this fee is divided in like proportions.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
On every petition heard at the Rolls whereon an order is made	0	5	0
Upon the admission of a guardian at the Rolls	0	5	0
Upon vacating a recognizance at the Rolls	0	5	0
Upon leaving any papers for his honour's perusal in any cause depending, the party that leaves them pays to the gentlemen of the chambers	0	5	0
Out of the fees paid by every fix clerk and examiner, upon their respective admissions, there is paid to the gentlemen of the chamber	5	0	0
Out of the fees paid by every sworn clerk in the fix clerks office, or clerk of the petty-bag, upon their respective admissions	2	0	0

THE USHER OF THE HALL AT THE ROLLS.

That the said usher do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, *viz.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For every cause heard by consent at the Rolls, in which a decree is made	0	2	0
For every cause heard in court at the Rolls after the term	0	1	0
Which			

Which fee of 1 s. is paid by the same party, and in the same manner, as the fee of 8 s. before mentioned is paid to the gentlemen of the Chambers.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
On every cause heard at the <i>Rolls</i> in <i>Michaelmas</i> and <i>Hilary</i> terms, when the court sits in the Hall	0	1	0
On the admission of a guardian admitted in the hall at the <i>Rolls</i> in those two terms —	0	1	0
Out of the fees paid by every six clerk or examiner, on admission	1	0	0

THE PORTER AT THE ROLLS.

That the said porter do not demand or take any greater fees or rewards for the business done or to be done, than the fees or rewards following, *viz.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Upon every cause heard by consent at the <i>Rolls</i> , wherein a decree is made — — —	0	2	0
Upon the hearing of every other cause, to be paid by the same persons, and in the same manner as the usher's fee is paid —	0	1	0
Upon every petition heard at the <i>Rolls</i> , whereon an order is made	0	1	0
Upon vacating every recognizance	0	1	0
Upon admission of a guardian	0	1	0
Out of the fees paid by every six clerk or examiner, upon admission	1	0	0
Out of the fees paid by every sworn clerk, in the six clerk's office, or clerk of the petty-bag office on admission — —	0	5	0
	INTER-		

INTERLOCUTORY MATTERS.

GENERAL INSTRUCTIONS to the
Solicitor as to Applications to this Court by Way
of Petition.

PETITIONS are either for matters of course, or for special matters, as a commission to plead, answer or demur, and for a guardian to be assigned for an infant defendant, and to take his answer by guardian. If a lunatic or an idiot, that he may answer by his committee, naming such committee in the petition.

If the infant lives in *London*, or within ten miles (unless particularly circumstanced) he must appear in court with the person intended by him to be his guardian, and his solicitor or clerk in court must on a piece of paper write down the title of the cause, and in a fresh line underneath the same, that the infant prays, that such a one (*the person intended to be his guardian*) may be so appointed to answer bill, and defend the suit for him; which done, a counsel moves the same; it is usually granted by the court, if no objection made to the guardian; the order made thereon is drawn up and entered as a common order, when the infant's guardian so appointed may swear to the answer.

You may petition for time to answer the plaintiff's bill, if you cannot get your answer ready by the time allowed by the rules of the court. In a *town cause* the court usually allow *ten weeks, viz.* a month, a month and a fortnight.

The

The second month is *peremptory*, and the last petition must be to enlarge the last order for a month, for a fortnight longer time to answer. In a *country cause* the court will allow time from one term to another to return *de po.* and take answer; indeed, in all applications to this court, they give every indulgence to the suitors that is possible, so it is not to the apparent injury of one of the parties.

You may petition for a *subpœna* to rejoin, returnable *immediately* on a commission to examine witnesses in the country, for enlarging publication, paying money into court, &c. to stay process of contempt on sufficient ground, to be admitted to prosecute or defend suit, *in forma pauperis*, or for any matter of hardship that the plaintiff or defendant may labour under in a suit, or to amend mistakes; but in these cases, if costs are incurred thereby, the order made on such petition will not operate till such costs are paid.

You may petition touching any collateral matters which have relation to former suits in this court, or against an officer of the court, or to have a clerk in court or solicitor's bill taxed by a master, or to cause him to deliver up deeds and papers, &c. necessary in the cause on his removal. In this court, most things that may be moved for as matters of course, may be obtained by petition.

On petitions of course, in which the court has made an order, if the adverse party wants to discharge the same, or has any thing to alledge to the court thereon, it is usually done by petition, but the court will sometimes assist the party by motion, though they will not allow their orders when made to be altered or explained by
petition,

The Modern Practice of the

petition, but will (on petition) stay the operation of an order, till the party can have an opportunity to move and debate the matter therein. *Chan. Ord. 151.*

Orders made on petitions not dischargeable by petition only.

Orders for a commission for examining witnesses, depositions or examinations taken thereon must be first referred to a master, and his certificate had before they can be discharged by petition. Injunctions to stay suits at law cannot be granted, revived or dissolved, nor injunctions of any other sort pass on order grounded on petition without notice, that is, a copy of the petition given the clerk in court, or solicitor on the other side, the petition filed, and the order thereon drawn up and entered with the register. *Chan. Ord. 151.*

No sequestration, dismissal, retainer on dismissal, or final order can be granted by petition, nor can the commitment of any one on process of contempt be discharged but by motion of court, on notice that the opposite party may be heard, if he thinks proper. *Chan. Ord. 151.*

Petitions of course are preferred to the *Master of the Rolls* in term or vacation, and matters that require dispatch, and are of great consequence, and usually procured by motion, may be petitioned for in the vacation.

Petitions for setting down of pleas, demurrers or exceptions for argument, re-hearings and special orders made by the Chancellor, are generally applied for to him; but the Master of the Rolls may be petitioned to re-hear a cause heard before himself.

The

The following petitions must be drawn in a concise and explicit manner, and the matter therein requiring aid or redress from the court, must be fully explained; they must be fairly ingrossed on a sheet of treble six-penny, and must be lodged with the secretaries of the Chancellor or Master of the Rolls, *as the case may be.*

FORMS OF PETITIONS.

Between *W. L.* plaintiff,
In Chancery. and
W. W. and others, defendants.

To the right honourable the Master of the Rolls.

*The humble petition of W. W. one of the defendants,
to the bill of complaint of W. L. complainant.*

Sheweth,

That the plaintiff has lately exhibited his bill in this honourable court against your petitioner, and the other defendants, to which your petitioner has appeared, and taken a copy of such bill.

1st Petition.
For a
months time
to answer.

That the plaintiff's bill requires your petitioner to look into sundry deeds and papers, before he can be able to give a full answer thereto, which he cannot do within the time limited by the strict rules of this honourable court, and for as much as your petitioner is not yet in contempt.

Your petitioner therefore humbly prays your honour, that he may have a month's time to plead, answer, or demur to the plaintiff's bill, and that all proceedings
for

The Modern Practice of the
want thereof may be in the mean time
stayed.

And your petitioner shall ever pray, &c.

Between *W. L.* plaintiff,
In Chancery. and
W. W. and others defendants.

To the right honourable the Master of the Rolls.

*The humble petition of W. W. one of the defendants
to the bill of complaint of W. L. complainant*

Sheweth,

ed Petition.
For a
month's fur-
ther time to
answer; the
order thereon
wi
remptory.

That your petitioner has already obtained a
month's time to answer the plaintiff's bill, but
the same being filed for a discovery of a title to
an estate, your petitioner has sundry deeds and
papers to look into, &c. before he can make a
full answer to the plaintiff's bill, which he has
not yet been able to accomplish; and for as
much as your petitioner is not in contempt,

Your petitioner therefore humbly prays
your honour that he may have a month's
further time to plead, answer or demur
to the plaintiff's bill; and that all pro-
ceedings for want thereof may be in the
mean time stayed.

And your petitioner shall ever pray, &c.

Between

Between *W. L.* plaintiff,
In Chancery. and
W. W. and others defendants.

To the right honourable the Master of the Rolls.

The humble petition of *W. W.* one of the defendants,
to the bill of complaint of *W. L.* complainant,

Sheweth,

That your petitioner has already obtained ^{3d} Petition.
two orders for a month's time each to answer To enlarge,
the plaintiff's bill, but the same being filed the order
for a discovery of a title to an estate, your made on the
petitioner has sundry deeds and papers to look second, peti-
into and peruse, before he can make a full tion for a
answer to the plaintiff's bill, which he has not fortnight's
yet been able to accomplish; and for as further time
much as your petitioner is not in con- to answer.
tempt.

Your petitioner therefore humbly prays
your honour, that the last order made
in this cause may be enlarged for a
fortnight's further time, to plead, an-
swer or demur to the plaintiff's bill,
and that all proceedings for want
thereof may be in the mean time
stayed.

And your petitioner, &c.

In Chancery.

Between *A. B.* plaintiff,
and
C. Earl of E. defendant.*To the Right Honourable the Lord High Chancellor
of GREAT BRITAIN.**The humble petition of the plaintiff*

Sheweth,

For a letter-
missive to a
nobleman,That your petitioner hath exhibited his bill
into this honourable court against the said
C. Earl of E. who in regard to his quality
cannot be compelled, by the ordinary process of
this court, to appear to your petitioner's said bill.Your petitioner therefore most humbly
prays your Lordship's letter missive, di-
rected to the said *C. Earl of E.* desiring
his Lordship to appear to your petition-
er's said bill on the day of
next,*And your petitioner shall ever pray.*

Note: On the above petition, the solicitor pro-
cures the Chancellor's letter for the defendant's ap-
pearance; the solicitor must deliver to the defendant
the letter, and an office-copy of the plaintiff's bill
signed by the six clerk, or his deputy; if he does not
appear plaintiff takes out a subpoena against him,
(and if he remains still in contempt) he must move
the court for an order for him to shew cause in eight
days after personal service of the order on the defen-
dant, why a sequestration should not go forth, and
if he still stands out, a sequestration issues.

In

In Chancery.

Between *A. B.* plaintiff,
and
C. D. defendant.

To the Right Honourable the Master of the Rolls

The humble petition of the plaintiff

Sheweth,

That your petitioner filed his bill in this honourable court against the defendant in _____ term last, to which the defendant has appeared and put in his answer; on which your petitioner is advised to make *E. F.* a defendant in this cause. To amend bill, by adding a defendant,

Your petitioner therefore most humbly prays your honour, that he may have leave to amend his bill, by adding the said *E. F.* a defendant thereto, with apt words to charge him.

And your petitioner shall ever pray.

In Chancery. Between *A. B.* plaintiff,
and
C. D. and others defendants.

To the right honourable, the Master of the Rolls.

The humble petition of the plaintiff

Sheweth,

That your petitioner having filed his bill in this honourable court against the defendant *C. D.* and others, the said defendant *C. D.* has only put in his answer thereto, (none other of the defendants having yet appeared thereto); on perusal of whose answer, your petitioner To amend bill on payment of 20s. costs.

The Modern Practice of the
petitioner is advised by his counsel to amend
his bill.

Your petitioner therefore most humbly
prays your honour, that he may be at
liberty to amend his bill, upon payment
of twenty shillings costs to the said de-
fendant *C. D.* or his clerk in court, in
respect thereof.

And your petitioner shall ever pray.

In Chancery.

Between *A. B.* plaintiff,
and
C. D. defendant.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiff

Sheweth,

For plaintiff
to dismiss his
own bill.

That your petitioner having exhibited his
bill in this honourable court against the de-
fendant, since which the said defendant hath
put in his answer thereto, upon perusal
whereof your petitioner is advised to dismiss
his bill.

Your petitioner therefore most humbly
prays your honour, that his said bill may
stand dismissed out of this court with
costs to be taxed by one of the masters
of this court.

And your petitioner shall ever pray.

In

In Chancery.

Between *A. B.* plaintiff,
and
C. D. defendant.

To the right honourable the Master of the Rolls,

The humble petition of the defendant

Sheweth,

That the plaintiff having filed his bill in this honourable court against your petitioner, and caused a *subpoena* to appear and answer to the said bill to be served on your petitioner, to which your petitioner hath accordingly appeared, and taken a copy of the said bill; and his time for answering not being expired, nor being in contempt.

For plaintiff to give security to answer costs, he living out of the kingdom, and for a month's time to answer.

That the plaintiff by his bill styles himself of the island of *Barbadoes* in the *West Indies* in parts beyond the seas, and your petitioner lives in the county of *Middlesex*.

Your petitioner therefore most humbly prays your honour, that the plaintiff may procure some sufficient person here in *England* to give security according to the course of the court, to answer costs before your petitioner be obliged to answer the said bill, and that your petitioner may have a month's time to plead, answer, or demur to the said bill after such security given.

And your petitioner, &c,

Between *A. B.* plaintiff,
In Chancery, and
E. F. defendant.

To the right honourable the Master of the Rolls,

The humble petition of the defendant

Sheweth,

To be discharged out of the custody of the Serjeant at Arms.

That your your petitioner is and has been (for above a fortnight) in custody of the serjeant at arms attending this honourable court, for not answering to the plaintiff's bill, which your petitioner has since answered, and paid the costs of the contempt, and the clerk in court of the other side doth consent to your petitioners discharge, as by the certificate annexed appears.

Your petitioner therefore humbly prays your honour, that your petitioner may be discharged out of the custody of the serjeant at arms, paying his fees.

And your petitioner shall ever pray.

Note : *The clerk in court on the other side gives you a certificate, that costs of contempt are paid, which you annex to ground your petition.*

Between

In Chancery. Between *A. B.* plaintiff,
and
C. D. defendant.

To the right honourable the Master of the Rolls,

The humble petition of the defendant

Sherweth,

That your petitioner was this day served with the injunction of this honourable court to stay his proceedings at law for the matters now in question, with the usual clause of liberty, in default of a plea, to enter up judgment, with stay of execution. For a return of a writ of inquiry.

That there being default of a plea, your petitioner had an interlocutory judgment, and a writ of inquiry issued, and was long since delivered to the Sheriff, who executed the same this day.

That without a return of the writ, your petitioner cannot have a final judgment.

Your petitioner humbly prays your honour, that he may be at liberty to call for the return of the said writ, and to enter up a final judgment, he being willing to stay execution according to the said injunction.

And your petitioner shall ever pray.

The Modern Practice of the

Between A. B. plaintiff,
In Chancery. and
C. D. defendant.

To the right honourable the Master of the Rolls,

The humble petition of the defendant,

Sheweth,

For a dedimus potestatem (after attachment) for time to return answer.

That the plaintiff having exhibited his bill into this honourable court against your petitioner and others, and served your petitioner with process returnable the first day of last term, your petitioner appeared thereto, but the writings that related to the matters in question not being in your petitioner's hands, your petitioner could not possibly procure the same so as to perfect his answer by the time allowed by the rules of this court; whereupon your petitioner has been lately arrested upon an attachment of contempt issuing out of this honourable court.

That your petitioner living one hundred miles distant from London, and being willing to enter his appearance with the register by his clerk in court, as on the attachment.

Your petitioner therefore most humbly prays your Honour, that he may be at liberty to take out a *dedimus potestatem*, returnable the first return of next term, to take his answer, and that he may have a week allowed him within the said term to return the same, and that in the mean time all further proceedings for want of the same may be stayed.

And your petitioner shall ever pray.

Note:

High Court of Chancery.

441

Note: *The answer given to this petition is usually, that the defendant enter his appearance with the register in four days.*

Between A. B. plaintiff,
and
C. D. defendant.

To the right honourable the Master of the Rolls,

The humble petition of the defendant

Sheweth,

That your petitioner is made a party to the plaintiff's bill exhibited in this court, merely for the sake of form, To put in answer without oath.

That the plaintiff is willing, that your petitioner's answer to the said bill should be put in without oath, and has by his clerk in court signified his consent thereto.

Your petitioner therefore humbly prays your Honour, that he may have leave to put in his answer without oath to the plaintiff's bill.

And your petitioner shall ever pray.

Note: To this petition and all other petitions which require the clerk in court's consent, he signs in these words,

I do consent to the prayer of this petition, if your honour shall please to order the same.

F. D.

U 5

Between

The Modern Practice of the

Between A. B. plaintiff,
In Chancery. and
C. D. and L. his wife, defendants.

To the right honourable the Master of the Rolls,

*The humble petition of the defendant, L. D. wife
of the defendant C. D.*

Sherweth,

For a feme
covert to an-
swer without
her husband.

That the plaintiff hath exhibited his bill in this honourable court against your petitioner and her husband, whereto your petitioner hath appeared; and in regard your petitioner's said husband hath absconded and lived separate from her these two years.

Your petitioner therefore most humbly, prays your honour, that she may be at liberty to put in her answer to the plaintiff's said bill without her husband.

And your petitioner, &c.

Between A. B. plaintiff,
In Chancery. and
C. D. defendant.

To the right honourable the Master of the Rolls,

The humble petition of the defendant

Sherweth,

For time to
answer, and
return a de-
dimus potes-
tatem.

That the plaintiff having filed his bill against your petitioner, he has appeared thereto and taken a copy.

That your petitioner residing in the county of E—, a commission is issued to take his answer, and made returnable in — but your petitioner finds he shall not be able to re-
turn

turn the same within the time limited by the strict rules of this court; and forasmuch as your petitioner is not in contempt, nor has yet had any order for time.

Your petitioner humbly prays your honour, that he may have time to put in his answer to the said bill, until —, and that all process of contempt for want thereof be in the mean time stayed.

And your petitioner, &c.

Between *A. B.* plaintiff,
and
C. D. defendant.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiff

Sheweth,

That your petitioner having filed his bill in this honourable court against the said defendant, whereto he hath appeared; but the said defendant living a great distance from London to wit, in the county of *E*— he hath obtained time to put in his answer till the first day of next Michaelmas term.

To examine
a witness *de*
bene esse be-
fore issue
joined.

That one *J. J.* of, &c. gentleman, a very material witness for your petitioner in this cause, and without the benefit of whose evidence, your petitioner (as he is advised) cannot safely proceed to a hearing of this cause; and the said *J. J.* being eighty years of age or upwards, and very weak and infirm, so that in all probability he may not live till your petitioner can bring his cause to an issue, as by the affidavit annexed appears.

The Modern Practice of the

Your petitioner therefore most humbly prays your honour, that he may be at liberty forthwith to examine the said *J. J. de bene esse*, as a witness for your petitioner in this cause, saving all just exceptions.

And your petitioner, &c.

Between *A. B.* plaintiff,
In Chancery. and
C. D. defendant.

To the right honourable the Master of the Rolls.

The humble petition of the defendant

Sheweth,

For a special commission, and for commissioners names, or in default, the commission to issue *ex parte*.

That on the — day of — last, the plaintiff exhibited his bill in this honourable court against your petitioner, who has appeared thereto and taken a copy.

That your petitioner's clerk in court has oftentimes applied to the plaintiff's clerk in court for commissioners names for taking your petitioner's answer, who refuses to give names for that purpose.

That your petitioner resides in the county of *D—*, and is advised to plead, answer and demur to the said bill.

Your petitioner therefore most humbly prays your honour, that he may be at liberty to take out a commission to plead, answer and demur to the plaintiff's bill; and that the plaintiff's clerk in court may in two days after notice hereof give commissioners names to the petitioner's clerk in court, to take your petitioner's plea, answer and demurrer, or in default thereof, that your petitioner may
be

be at liberty to take out the said commission directed to his own commissioners.

And your petitioner, &c.

Between *A. B.* and another, plaintiffs,
In Chancery. and
C. D. ————— defendant.

To the right honourable the Master of the Rolls.

The humble petition of the defendant

Sheweth,

That the plaintiffs exhibited their bill in this honourable court against your petitioner, to which he has appeared and taken an office copy.

That your petitioner residing in the county of *Y*— has craved a commission to take his answer; and the plaintiffs have given commissioners names for that purpose.

But forasmuch as your petitioner is an infant, and cannot answer the plaintiffs bill, nor defend this suit without having a guardian assigned for that purpose.

Your petitioner therefore humbly prays your honour, that he may be at liberty to sue out a commission to assign him a guardian, and to take his answer by such guardian.

And your petitioner, &c.

Between

The Modern Practice of the

Between A. B. plaintiff,
In Chancery. and
C. D. defendant.

To the right honourable the Master of the Rolls.

The humble petition of the defendant

Sheweth,

To take an-
swer *de novo*
to amend
caption, and
stay process.

That in *Easter* term last the plaintiff filed his bill in this honourable court against your petitioner, and a commission issued to take your petitioner's answer, by virtue whereof it was taken, returned and filed; but on looking into the same there appeared to be a mistake in the caption, whereupon the plaintiff obtained an order to suppress the said answer, it not appearing by the said caption that your petitioner was ever sworn to the truth of the said answer.

That in regard this is in your petitioner's own delay, who is desirous that this mistake should be rectified, and is ready and willing to pay the plaintiff his costs out of purse touching the said order;

Your petitioner therefore most humbly prays your honour, that he may be at liberty to sue out another commission directed to the former commissioners to take his said answer *de novo*, and that the caption thereof may be rectified or amended; and that your petitioner may have three weeks time to return the same, and that all further proceedings for want thereof be in the mean time stayed.

And your petitioner, &c.

Between

Between A. B. plaintiff,
In Chancery. and
C. D. defendant.

To the right honourable the Master of the Rolls.

The humble petition of the defendant

Sheweth,

That your honour on the day of For further
last was pleased, on your petitioners entering time after
his appearance with the register on an attach- defendant
ment, to grant him a commission to take his, has entered
answer, returnable without delay, and to give his appear-
him time to the last week in the term to return, ance with
the same, and to stay all proceedings for want the register.
thereof in the mean time.

That your petitioner appeared with the re-
gister, and issued out a commission according-
ly, and has taken his said answer, but his ha-
bitation being in the county of C——, the
same is not returned.

Your petitioner therefore humbly prays
your honour to give him *ten days* time
to return his said answer, and to stay
all proceedings for want thereof in the
mean time.

And your petitioner, &c.

Between

The Modern Practice of the

Between *A. B.* plaintiff,
In Chancery. and

C. D. defendant:

To the right honourable the Master of the Rolls.

The humble petition of the defendant

Sheweth,

To withdraw
a plea.

That the plaintiff having filed his bill in this honourable court against your petitioner, and your petitioner having put in his plea and demurrer thereto, your petitioner is since advised to make other defence to the said bill.

Your petitioner therefore humbly prays your honour, that he may withdraw his said plea and demurrer, upon paying the plaintiff or his clerk 20 s.

And your petitioner, &c.

Between *A. B.* plaintiff,
In Chancery. and
C. D. defendants:

To the right honourable the Master of the Rolls,

The humble petition of the plaintiff

Sheweth,

To refer an
examination
to a master,
and to tax
costs on the
breach of an
order.

That the defendant having been examined on interrogatories touching a contempt laid to his charge, for breach of an order of this court of the — day of — last, your petitioner has examined witnesses for proof thereof.

Your petitioner humbly prays your honour, that it may be referred to a Master of this honourable court to consider
of

of the said examination and depositions, and to certify whether the defendant hath committed the contempt laid to his charge, and to tax costs according to the general order in that behalf.

And your petitioner shall ever pray.

In Chancery. Between *A. B.* plaintiff,
and
C. D. defendant.

To the right honourable the Lord High Chancellor of Great Britain.

The humble petition of the plaintiff

Sheweth,

That the defendant having refused to answer your petitioner's bill, all process of contempt to a sequestration hath been sued out against him, and a commission of sequestration hath been sued out, executed and returned; but your petitioner hath since discovered, that not above one third part of the said defendant's estate is sequestered, and that the said commission was committed to the hands of a person therein named, who neglected to sequester the said estate. To renew a sequestration.

Your petitioner therefore most humbly prays your lordship, that he may be at liberty to take out a new commission of sequestration to sequester the said defendant's estate, directed to new commissioners.

And your petitioner, &c.

Between.

Between *A. B.* — — — plaintiff,
In Chancery. and
C. D. and others defendants.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiff

Sheweth,

Towithdraw a replication and amend a bill on payment of 2*s.* costs to such defendants as have answered. That some time since your petitioner filed his bill in this honourable court against the said defendants, to which they appeared and answered, and your petitioner replied, but no witnesses have been yet examined in the said cause.

That your petitioner is since advised to amend his said bill, by adding *L. M.* a defendant with proper charges; and forasmuch as this is in your petitioner's own delay;

Your petitioner most humbly prays your honour, that he may have leave to withdraw his replication, and amend his bill, as he shall be advised; on amending the copies of the said bill of such of the defendants who have answered the same, your petitioner not requiring any answer to such amended bill from the said defendants who have already answered.

And your petitioner, &c.

Between

Between *A. B.* — — — plaintiff,
In Chancery. and
C. D. and others defendants:

To the right honourable the Master of the Rolls,

The humble petition of the plaintiff

Sheweth,

That your petitioner filed his bill in this court against the said defendants, who have appeared thereto, and put in their answers, to which your petitioner hath replied, and is desirous to speed his cause.

For a subpoena to rejoin, and that service on the clerk in court may be good, and to issue and strike commissioners names.

Your petitioner therefore humbly prays your honour, that he may be at liberty to take out *subpœna's* to rejoin, returnable immediately, and that service thereof on the defendants clerks in court may be deemed good service on the defendants, and that your petitioner may be at liberty to sue out a commission for examination of his witnesses, returnable without delay, and that the defendants clerks in court do, in *four days* after notice hereof, join and strike commissioners names with your petitioner's clerk in court, or in default thereof, that your petitioner may have a commission directed to his own commissioners.

And your petitioner, &c.

Note: To the prayer of this petition may be added, *And that your petitioner may be at liberty to examine in term time.*

Between

The Modern Practice of the

Between *A. B.* complainant
In Chancery. and
C. D. defendant.

To the right honourable the Master of the Rolls,

The humble petition of the plaintiff

Sheweth,

For a subpoena
returnable
on immediately.

That your petitioner having filed his bill in this honourable court against the said defendant, and the said defendant living and residing within miles of the city of London, as by the affidavit annexed appears;

Your petitioner therefore most humbly prays your honour, that he may be at liberty to take out process of *subpœna* for the said defendant to appear to, and answer your petitioner's said bill returnable immediately.

And your petitioner, &c.

Between *A. B.* and *C. D.* ——— plaintiffs,
In Chancery, and

E. F. and *G.* his wife,

H. I. and *K.* his wife,

and *L. M.* and *N.* his
wife,

} Defendants.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiff

Sheweth,

For plaintiffs
to be admitted
in forma
pauperis.

That your petitioners having filed their bill in this honourable court against the said defendants; thereby setting forth, that *T. D.* late of ——— in the county of ——— deceased, at the time of his death, which happened in February 1772, was possessed of a personal estate, va-

lue,

due 7000 *l.* and died intestate without issue, leaving your petitioners and the defendants *E. F. H. I.* and *L. M.* his nearest relations and next of kin, to whom his personal estate ought to have come and been equally divided amongst them, according to the statute of distribution of intestates estates.

That the intestate dying at ———— aforesaid, and your petitioners living very remote from him, and defendant *G.* wife of defendant *B.* living with or near the intestate at his decease, obtained administration to her, and she and her said husband possessed themselves of all the intestate's personal estate and effects, and your petitioners being intire strangers to the intestate's circumstances, the said defendant *B.* and his wife sent to the plaintiff *A. B.* 100 *l.* and to the plaintiff *C. D.* 100 *l.* separately, assuring them that the said respective sums were your petitioners respective full distributive shares of the said intestate's personal estate, and at the same time sent general releases therewith, which your petitioners upon such report and assurances were prevailed upon to execute, relying on such assurances to be true.

That your petitioners have since discovered that the said intestate died possessed of a personal estate, value 7000 *l.* as aforesaid, and that they were imposed upon in the said releases, the same being obtained by fraud and false suggestions; and therefore filed their bill in this honourable court against the said defendants to set aside the said releases further than they extend as discharges for 100 *l.* and 100 *l.* and to have an account of all the intestate's personal estate, and that your petitioners may be paid their full and distributive shares of all the said intestate's personal estate.

That the said defendants *E. F.* and *G.* his wife, have put in their separate answers to your petitioners said bill; and the said *E. F.* amongst

The Modern Practice of the

(amongst other things) admits the said intestate died without issue, possessed of a personal estate of about 1500 *l.* value, which he and his said wife possessed themselves of, and that the petitioners were entitled as aforesaid, and that they received no more than the aforesaid respective sums of 100 *l.* and 100 *l.* and were induced to give releases, or discharges, as aforesaid, which he says he believes they would not have given, if truly informed of the said personal estate: And the said G. (amongst other things) admits the said intestate died possessed of a considerable personal estate; but insists that your petitioners executed general releases to her and her husband, at the times they received the said respective sums of 100 *l.* and 100 *l.* and insists on their being sufficient discharges; but has not thought fit to plead the said releases.

That your petitioners, by reason of their poverty, as appears by the annexed affidavit, are utterly unable to prosecute their said suit, unless they be admitted so to do *in forma pauperis*.

Your petitioners therefore most humbly pray your honour, that they may be admitted to prosecute their said suit *in forma pauperis*; and that Mr. K. may be assigned their counsel, and Mr. S. their fix clerk,

And your petitioner, &c.

Counsel's
certificate of
just cause of
suit.

I humbly conceive, that the plaintiffs have just cause to be relieved touching the matters of this petition, and for which they have exhibited their bill.

I. M.

Note: There is an affidavit annexed to support the above petition, that the plaintiffs are not worth 5 *l.* &c. See head Affidavit.

The Master of the Rolls having answered petition by admitting them paupers, they pay no fees (but pauper

pauper fees) to their counsel and attorney in the said suit. Vide Ord. Chan. p. 152.

Paupers may be personally punished by order of the court, if a suit goes against them, but they are seldom charged with more than the costs out of purse, if they do not succeed when plaintiffs or defendants. Vide Abr. Eq. v. 2. p. 633.

Between A. B. plaintiff,
and
C. D. defendant.

To the right honourable the Master of the Rolls.

The humble petition of the defendant

Sheweth,

That your petitioner is served with process to appear to, and answer the plaintiff's bill; but being very poor, as appears by the annexed affidavit, is by reason of such his extreme poverty unable to make his defence thereto, if not permitted to defend *in forma pauperis*. For a defendant to be admitted in *forma pauperis*.

Your petitioner therefore most humbly prays your honour to admit him to defend this suit *in forma pauperis*, and to assign him for his council Mr. M. and Mr. G. for his fix clerk,

And your petitioner, &c.

Note: The above petition must be supported by affidavit, but no certificate is necessary.

Between A. B. and I. K. plaintiffs,
and
C. D. and others defendant.

To the right honourable the Master of the Rolls,

The humble petition of the plaintiff

Sheweth,

That your petitioners some time since exhibited their bill in this honourable court against the defendant C. D. and others, and in the month of To appoint a day for an absconding defendant to appear.

The Modern Practice of the

of last took out process of subpoena under the seal of this court, against him the said defendant, to compel him to appear to and answer the said bill, and the utmost endeavours have been used to serve him with the said process and the strictest enquiry has been made after him, at his last known usual place of abode, and at several other places, but he cannot yet be found to be served therewith, and there is reason and just ground to believe that he absconds for debt; and to avoid being served with the process of this honourable court, and of other courts, as appears by the annexed affidavit; and in regard the said defendant has not yet appeared to your petitioner's said bill.

Your petitioners therefore humbly pray your honour to appoint a short day for the said C. D. to appear to your petitioners said bill, pursuant to the act of parliament made in the fifth year of his late Majesty's reign, &c.

And your petitioners, &c.

Between A. B. plaintiff,
and
C. D. defendant.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiff

Sheweth,

To accept
bill *nunc pro
tunc.*

That your petitioner having exhibited his bill in this honourable court against the said defendant, thereby praying, among other things, for an *injunction*, &c. and having served the defendant with process to appear, and answer the same, the said defendant appeared accordingly; but your petitioners bill not being put at the exact

exact day, tho' in a very few days after, the defendant's clerk in court refuses to accept the same, and insists upon the costs.

Wherefore your petitioner humbly prays your honour, that the defendant's clerk in court may be ordered to accept your petitioner's bill, upon payment of costs out of purse.

And your petitioner, &c.

In Chancery. Between *A. B.* plaintiff
and
 C. D. defendant.

To the right honourable the Master of the Rolls,

The humble petition of the plaintiff

Sherweth,

That your petitioner, in *Easter* term last past, exhibited his bill in this honourable court against the defendant, to which the said defendant appeared, but hath neglected to put in his answer thereto; and the said defendant living and residing within the distance of ——— miles from the city of *London*, as by the affidavit annexed appears.

For process
of contempt
for want of
answer.

Your petitioner therefore most humbly prays your honour, that he may be at liberty to make out process of contempt against the said defendant, for want of his answer, returnable immediately.

And your petitioner, &c.

X

Between

The Modern Practice of the
Between A. B. plaintiff,
In Chancery. and
C. D. defendant.

To the right honourable the Master of the Rolls.

The humble petition of the defendant

Sheweth,

To join and
strike com-
missioners
names, or in
default, to
issue a com-
mission *ex*
parte.

That on the _____ day of _____ last your petitioner was served with an order obtained upon the plaintiff's petition of the _____ day of _____ for a *subpœna* to rejoin, returnable immediately, and that service thereof on your petitioner's clerk in court be good service, and that your petitioner's clerk in court should on four days notice join and strike commissioners names with the plaintiff's clerk in court, or that in default thereof the plaintiff might sue out a commission directed to his own commissioners.

That your petitioner, upon receiving the same, was ready to comply with the terms therein mentioned, and accordingly applied to the plaintiff's clerk in court, to join and strike commissioners names with him, who informed your petitioner's clerk in court, that he had not names, and put him off with trifling excuses.

That your petitioner has very good reason to believe that such excuses were made merely for delay; and in regard your petitioner hath several material witnesses, as he is advised, to examine, and is desirous the cause should be speeded.

Your petitioner most humbly prays your Honour, that the plaintiff's clerk in court may in four days after notice join and strike commissioners names with your petitioner's clerk in court; or that, in default thereof, your petitioner may sue out a commission for examination of witnesses, directed to his own commissioners.

And your petitioner, &c.

Between

Between *A. B.* plaintiff,
and
C. D. defendant.

The humble petition of the plaintiff

That your petitioner, last *Trinity* vacation, took out a commission to examine witnesses, wherein the defendant joined, but your petitioner was not able to execute the same during that vacation.

That your petitioner is in hopes of doing the same this vacation ; but one of the commissioners, (to wit) S. R. Esq; is engaged to be in *London*; whereupon your petitioner hath named the persons subscribed in his room, but the defendant refuses to strike the said names in hopes of delaying your petitioner, and that the vacation may be lost.

Your petitioner therefore most humbly prays your honour, that he may be at liberty to alter the commission, and that your honour will be pleased to appoint which of the two persons subscribed shall stand in his room, and that your petitioner may be at liberty to renew the said commission, and to make the same returnable without delay.

And your petitioner, &c.

The Modern Practice of the

Between *A. B.* — — plaintiff,
In Chancery. and
C. D and *E. F.* defendants.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiff

Sheweth,

To examine
a defendant.

That issue being joined in this cause, your petitioner is advised that the said defendant *B. R.* is a very material witness for your petitioner; and forasmuch as he is no way concerned in point of interest,

Your petitioner therefore most humbly prays your honour, that he may be at liberty to examine the said defendant *B. R.* at the examination of witnesses in this cause, as a witness for your petitioner, saving just exceptions.

And your petitioner, &c.

Between *A. B.* plaintiff,
In Chancery. and
C. D. defendant.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiff

Sheweth,

To add an
interrogato-
ry or two,
but not to
examine any
witness al-
ready exa-
mined.

That your petitioner obtained an order for a commission to examine witnesses returnable —, and accordingly examined several witnesses, and returned his commission; but before publication passed, the defendant obtained an order for a commission to examine witnesses this vacation; and your petitioner has joined and

and struck commissioners names for that purpose ; but no notice is yet given of executing the said commission.

That your petitioner is advised it is necessary to add an interrogatory or two to his former set of interrogatories.

Your petitioner therefore humbly prays your honour, that he may be at liberty to add an interrogatory or two to his former set of interrogatories, but so as not to examine any witness that hath already been examined.

And your petitioner, &c.

In Chancery. Between *A. B.* plaintiff,
and
C. D. defendant.

To the right honourable the Master of the Rolls.

The humble petition of the defendant

Sheweth,

That a commission has been executed in this cause, and is returnable, since which the plaintiff hath given a rule to pass publication, but the same is not yet expired ; and forasmuch as your petitioner hath several material witnesses to examine in this cause, who live in and about the city of *B*———

To enlarge publication.

Your petitioner therefore most humbly prays your honour, that publication in this cause may be delayed for a fortnight.

And your petitioner, &c.

The Modern Practice of the

Between *A. B.* plaintiff,
In Chancery. and
C. D. defendant.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiff

Sheweth,

To receive
exceptions.

That your petitioner having exhibited his bill in this honourable court against the defendant, who hath put in his answer thereto, and your petitioner being advised that the said answer is insufficient in several material points, hath caused exceptions to be taken thereto. But the said exceptions not coming in by the time limited by the rules of this court, the defendant's clerk in court refuses to accept the same.

Your petitioner therefore most humbly prays your honour, that the said defendant's clerk in court may receive the said exceptions.

And your petitioner, &c.

Note: Exceptions cannot be ordered to be received as in due time, after three terms from the putting in of the answer without special reasons.

Between *A. B.* plaintiff,
In Chancery. and
C. D. defendant.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiff

Sheweth,

To refer
exceptions.

That your petitioner having exhibited his bill in this honourable court against the said defendant, he hath appeared and put in his plea and
swer

answer thereto; on arguing of which plea, on the —— day of —— last, the same was ordered to stand for an answer, with liberty to your petitioner to except to such matters as in the said order are mentioned.

That your petitioner obtained your honour's order of the _____ day of _____ last, that the defendant's clerk in court should receive exceptions as in due time, and accordingly your petitioner soon after delivered exceptions to the defendant's clerk in court; but the said defendant hath not submitted to put in a further answer, although his time for so doing is expired by the rules of this court.

Your petitioner therefore most humbly prays your honour, that it may be referred to one of the Masters of this court to look into your petitioner's bill, the defendant's plea and answer, and your petitioner's exceptions, and certify wherein the said plea and answer is insufficient.

And your petitioner, &c.

In Chancery.

Between *A. B.* plaintiff,
and
C. D. defendant.

*To the right honourable the Lord High Chancellor
of Great Britain.*

The humble petition of the plaintiff

Sheweth,

That at the hearing of this cause before your lordship, on *(the time when heard)* your lordship was pleased to order an issue at law to be tried, when, &c. *(the matter directed by the court.)*

That the issue hath since been tried at law according to the directions of the said order, and the defendant in this cause who was plaintiff in

The Modern Practice of the

the said action became *non suit* on full evidence.

Your petitioner therefore humbly prays your lordship to appoint a short day for setting down this cause on the equity reserved, and that your petitioner may have leave to move for his costs at law, and of his suit at the said hearing.

And your petitioner, &c.

In Chancery.

Between A. B. plaintiff,
and
C. D. defendant.

*To the right honourable the Lord High Chancellor
of Great Britain.*

The humble petition of the defendant

Sheweth,

For rehear-
ing a cause.

That your petitioner finds himself much ag-
grieved by a decretal order made in this cause
(*here insert the time when and before whom made*)
whereby your petitioner is ordered and decreed
to pay unto the plaintiff in this cause the sum of
L. by (*the time when to be paid*) with in-
terest (*or as the case may be*) for the same, from
the time of the said hearing until the said money
be paid, which sum of L. or the greatest
part thereof having been long since paid, and
proof thereof made as your petitioner conceives,
and is advised.

Your petitioner humbly prays, that your
lordship will be pleased to vouchsafe a
re-hearing in this cause before your
lordship, he submitting to pay what costs
the court shall award in case his com-
plaint be found groundless.

And your petitioner, &c.

Between

In Chancery. Between *A. B.* plaintiff,
and
C. D. and other defendants.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiff

Sheweth,

That your petitioner's cause being set down to be heard (*the time for which cause is set down to be heard*) and *subpœnas* to hear judgment have been issued and served on all the defendants, except the said defendant *C. D.* who absconds and conceals himself, so that your petitioner is not able to serve him with a *subpœna* to hear judgment in this cause, as by the *affidavit* annexed appears.

To serve a
subpœna to
hear judg-
ment on a
clerk in the
court, de-
fendant ab-
sconding.

Your petitioner therefore most humbly prays your honour, that service of the said *subpœna* to hear judgment on the said defendant *C. D.*'s clerk in court, may be deemed good service on the said defendant.

And your petitioner, &c.

In Chancery. Between *A. B.* plaintiff,
and
C. D. defendant.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiff

Sheweth,

That this cause being set down to be heard before your honour, your petitioner is advised it will be necessary for him to prove at the hearing

To prove an
exhibit *ex a*
voce at the
hearing.

The Modern Practice of the
thereof, a certain &c. (*whatever the matter is intended to be proved by the plaintiff at the hearing.*)

Your petitioner therefore most humbly prays your honour, that he may be at liberty at the hearing of this cause to call one or more witness or witnesses *viva voce* to prove the said &c.

And your petitioner, &c.

In Chancery.

Between *A. B.* plaintiff,
and
C. D. defendant.

To the right honourable the Lord High Chancellor of Great Britain.

The humble petition of the plaintiff

Sheweth,

To set down
exceptions to
a Master's
report.

That your petitioner hath lately filed exceptions to the report of Mr. *E.* one of the Masters of this court made in this cause, bearing date, &c. (*the date of Master's report*) and deposited five pounds, as by the register's certificate hereunto annexed appears.

Your petitioner therefore most humbly prays your lordship to appoint a short day for the arguing of the said exceptions.

And your petitioner, &c.

Note: *The register's certificate of the deposit must be annexed and left with the petition when preferred.*

Between

Between *A. B.* plaintiff,
and
C. D. defendants:

In Chancery.

To the right honourable the Master of the Rolls.

The humble petition of the plaintiff

Sheweth,

That your petitioner employed one Mr. *I. K.* (one of the solicitors of this court) to prosecute and solicit this suit.

To tax a solicitor's bill, where the same has been delivered.

That the said Mr. *I. K.* hath delivered a bill of fees and disbursements to your petitioner, which your petitioner conceives to be very extravagant, and the said Mr. *I. K.* threatens to sue your petitioner for the same, though your petitioner was always, and is still ready and willing, and hereby offers to pay the said Mr. *I. K.* his just fees and disbursements.

Your petitioner therefore most humbly prays your honour, that it may be referred to one of the Master's of this court to tax the said Mr. *I. K.*'s bill, and that all proceedings at law against your petitioner may in the mean time be stayed.

And your petitioner, &c.

Note : *This petition is to be varied, according to the circumstances of the plaintiff's case.*

Note: The common petition being answered, you take it from the Master of the Rolls's secretary, pay for answering 5 s. 6 d. carry it to the Register office in Symmond's Inn, Chancery-Lane, and get order drawn up thereon, pay for order 4 s. 6 d. and get Register to pass it, which is done by his signing the initial letters of his name; then make two copies of the order, viz. one for the Register, with one to serve, if but one clerk in court for the plaintiff; if more, as many copies as there are clerks in court for the plaintiffs. Carry order to the entering Register at the Register-office, and he will mark order *entered* on your leaving him copy order to enter by; which done, mark your copy or copies to serve, *entered* just under the initial letters of the Register's name, and serve same on the clerk or clerks in court for the plaintiff or plaintiffs, shewing them at the same time the original order passed and entered as aforesaid.

If the petition is for a matter that requires the judgment of the court, the answer is, *that all parties attend on the matter of the said petition, the next day of petitions, &c. (for the sum paid answering, see Table of Fees)*; make fair copies thereof, and serve on the solicitors or solicitor on the other side; enter petition in his lordship's paper of petitions with the secretary of causes; (*charge of entering, see Table of Fees*); make an abstract of the petition; pay counsel with same a guinea; attend hearing, if the prayer is granted; draw up order with the Register, and pass and enter same as on a common petition; the charge you will see in the list of officer's fees in this court under the proper head, and then serve the same as before.

If the petition is grounded on *affidavit*, the same must be filed with the clerk of the *affidavits*

in *Symmond's Inn*, and an office-copy made by him to be read at hearing the petition.

CASES OF PRACTICE.

Formerly no order made on any petition (unless the same be by way of summons) should be effectual to ground *subpœnas* or other *process*, but where within *three days* in term time, or a *week* in the vacation after such order granted, the same be drawn up and entered with the Register, to the end no person shall be surprised by any private order. *Vide Ord. Chan. 217.*

Note: *The practice on the foregoing order is now altered, and such orders may be drawn up almost at any time, so it be before such subpœna or process issues.*

In a petition for further time, the defendant must always mention what time he has before obtained, otherwise it would tend to delay justice, which the court always set their face against.

As to the time a defendant may obtain to put in his answer, it is intirely in the discretion of the court, in which they are chiefly governed by the circumstances of the case, though the usual time granted is as stated in a note to petitions for time to answer, in this work.

Held that a decree, much more an interlocutory order, if gained by collusion, may be set aside on a petition. *Vide Will. Rep. vol. 3. p. 111.*

The delivering over the body of a ward, or possession of a trust-estate, cannot be ordered on a petition, it must be by bill brought for that purpose. *Ibid. p. 154.*

An order obtained on a petition cannot be discharged on motion unless *ex parte*. *Vide Vesey, vol. 2. p. 113.*

OF APPLICATIONS TO THE COURT BY MOTION.

IT is the act of one or more of the parties in a suit for aid or redress, and must be made to the court by counsel. These motions are of two sorts, *viz. general or special.*

The *general or motion of course* is, by the established rules of the court, to be granted without hearing the other side, and therefore no notice is necessary to be given to the adverse party, though, when obtained, the other side may move to set the order aside, if procured by any false suggestion to the court, or if the same is apparently contrary to the rules of equity, and to the prejudice of the other party.

Note: *The applications of course may be granted on petition as well as by motion.*

The *special motion* is, where some fact or circumstance in the matter before the court is so locked up in the party's breast, that it cannot be seen by the court, and in such cases the court usually grant orders on such motions only *nisi*, although the party applying has given notice to the other side of such application.

There are other motions which are not governed by the general rules of the court, and which are granted or denied according to the discretion

discretion of the court, after hearing counsel on both sides.

Special motions, or those out of the common course, are seldom or ever granted without notice in writing being given to the other side; they are usually supported by *affidavit* of the facts alledged to induce the court to comply with such motion; where that is the case, an office copy of such affidavit must be procured to be heard in court in support of the motion. If the adverse party makes no defence, an *affidavit* of the service of such notice must be filed, and an office copy thereof must be produced under the hand of the proper officer, if it becomes necessary to prove the notice on the motion to make the order *nisi* absolute.

When notices of motion are necessary, they must be in writing, and every thing the party moves for, or the purport thereof, must be expressed in the body thereof, and they must be signed by the clerk in court, or solicitor, or otherwise they will not be deemed good.

The Form of a Notice of Motion.

Between *A. B.* plaintiff,
and :
C. D. defendant.

Mr. P. P.

Take notice, that the defendant intends to move this honourable court on *Monday* next, or so soon after as counsel can be heard, *that the plaintiff's bill may stand dismissed out of this honourable court, for want of prosecution, with costs to be*

The Modern Practice of the
be taxed by one of the Masters of this court, dated
this day of 1776.

Yours, &c. W. W, Solicitor for the Defendant.

To Mr. P. P. plaintiff's solicitor, these.

Note : *By the foregoing notice, the young clerk may draw once for any kind of application to the court, altering the same, mutatis mutandis.*

These notices are to be served on the adverse party's solicitor or clerk in court, that is, with the agent of the clerk in court at his seat in the six clerk's office in *Chancery-Lane*.

When notices are to be served.

They are to be served *two days* before the motion can be made ; *for example*, if the motion is to be made on *Thursday*, the notice should be served on *Monday* night, or at least very early on *Tuesday* morning.

Note : It is not deemed good service of a notice of motion to serve the same on *Saturday* for the *Monday* following ; it must be served on *Friday* for that time, because *Sunday* is not considered as a law-day.

On an intended motion *to receive money out of court*, the notice must be served personally on the adverse party, unless the court, on a former motion, has ordered so many days notice to the clerk in court, as may be sufficient to send his client notice, and to have his answer ; or if he be in the kingdom, but difficult to be found, on an *affidavit* thereof, such notice may be ordered to be served on the clerk in court.

Motions may stand over to be heard to a future day, if the court thinks fit. If a notice of motion

motion be given thrice, and not moved, the party giving the same will not be permitted by the court to move the same a *fourth* time; and the counsel for the adverse party, on producing these *four notices*, may pray the court, that the party may pay the costs of the *three* former notices, before he moves the *fourth* notice, which is generally ordered. If the matter intended to be moved is a matter of importance, and many counsel have been fee'd therein, the court will order the costs to be taxed by a master.

Note: In term, every *Tuesday, Thursday* and *Saturday* are days for sealing writs, except they be such holidays that the court does not sit.

Motions of course may usually be made every day in term at the rising of the court, after the causes are heard, though every *Thursday* in term is the day appointed by the court to hear motions, because on that day no causes are heard.

Note: The *first* and *last* days of every term are days set apart by the court for motions only.

In *vacation* the seal days only are appointed by the chancellor for motions, but at the Rolls, the morning after term motions may be made before his honour.

Note: All orders made on these motions are drawn up and passed by the Register, then entered and served, (if necessary) If the matter is special, you leave one of the briefs given to your counsel for the Register to draw up the order by.

CASES OF PRACTICE.

Motions of course cannot be opposed, though notice is given by the party moving same to the adverse party. *Vide Moseley 255. pl. 147.*

Notice of motion given by one not allowed to act as solicitor, not held good. *Vide Wm. Peer Wms. vol. 3. p. 104.*

Notice to an agent, as well as personal notice will affect the party, and the deposition of the agent will be allowed to be read. *Vide Vezey, vol. 1. p. 48.*

OF REFERENCES FROM THE COURT TO A MASTER.

IT is an order of the court, whereby any matter before them is referred to the Master to examine, and make his report therein, that the court may be enabled absolutely to determine such matter.

The reference is most usually made by the court to one of the fitting Masters (*though that is absolutely in the discretion of the court*) to examine the matter referred, and make his report to the court, as well before as after hearing the cause.

How to draw up the order, and proceed on the reference.

The order is drawn up by one of the registers, and passed and entered as a common order, for which you pay the register, and entering clerk, as *per Table of Fees preceding the Interlocutory Matters in this Work, under the heads Register, or entering Register.*

The

The order being compleated, you produce the same before the Master, to whom the matter is referred on your attending him thereon, or you may leave the same with his clerk, together with a fair copy of the matter you intend to go on. Having left a copy of the proceedings as aforesaid, you take out a warrant from the Master's clerk to attend thereon, pay for warrant 2s. make copy thereof, underwrite at bottom on the left hand side the matter you go on, and serve copy on the adverse party's solicitor or clerk in court at his seat in the six clerk's office. If the adverse party's solicitor or clerk in court do not attend, you take out a *second warrant*, underwriting it as before, and calling it second warrant; if not attended, a *third warrant* underwrote, and marked as the two former. This is termed a *peremptory* warrant, and if not attended by the adverse party, on an *affidavit* made of the service of the *three warrants*, the Master will proceed on the matter referred *ex parte*, if desired. In this business, the parties may attend the Master by counsel, if they see cause.

Between *A. B.* plaintiff,
and
C. D. defendant.

K. R. of *Esq.* clerk to *Mr. P. P.* solicitor for the plaintiff in this cause, maketh oath, that he this deponent, on the _____ and _____ days of this instant *May*, severally served the three several warrants hereunto annexed, by severally delivering true copies thereof unto *Mr. T. T.* who is solicitor for the defendant in this cause, and at the same time shewing him the said three annexed warrants; and this deponent further saith, that, on the three several days and times therein mentioned, he, this deponent

The form of an affidavit of the service of three warrants on a reference to the Master, where neither the defendant, his solicitor, or clerk in court attend, in order to proceed *ex parte*.

The Modern Practice of the

ponent, did duly attend thereon, but that the said defendant in this cause, Mr. T. T. his solicitor, or his clerk in court, or any or either of them, did not on either of the said three several days or times aforesaid attend thereon.

K. R.

Sworn, &c.

Note: This affidavit must be ingrossed on a treble six-penny stamp, and sworn and produced before the Master; when, if desired, he will proceed on the reference ex parte.

The manner of under-writing warrants before the master.

1st Warrant.—*The plaintiff has left his charge.*

2d Warrant.—*To proceed on the plaintiff's charge.*

3d Warrant.—*At which time I shall peremptorily proceed on the plaintiff's charge.*

Note: The under-writing the warrants must be varied according to the nature of the matter before the Master.

In this manner the plaintiff or defendant's solicitor (as the case may be) continues to take out and attend warrants, till the Master has gone through the matter before him.

Note: A warrant must be served two days before the day of attendance, and properly no person ought to object or defend the proceedings, who has not taken and paid for an office-copy of the proceedings from the Master's clerk.

In these references, the first warrant is seldom attended by the adverse party's solicitor or clerk in

in court, because they are in general not prepared with office-copies of the matters left with the master.

Note : In taxing the costs arising to the plaintiff and defendant's solicitors on this business, they are allowed for all office-copies, and also 2 s. for the warrants each, and 2 s. for copy and service of each warrant, and 6 s. 8 d. for each attendance on the Master under a warrant.

If a matter of maintenance be referred to a Master on the hearing of a cause, the order of reference must be drawn up, passed and entered, and a copy served on the adverse party's solicitor or clerk in court, afterwards you lay by the order, and a state of facts or proposals for the allowance you would have; stating the fortunes the infants are intitled to, and the ordering part of the order before the Master; then take out warrants, and serve on the parties interested; on the last warrant attend the Master at the time, and produce your warrants, and proceed to state the case or oppose it (*as the case may be.*)

1st Warrant.—*The plaintiff hath left a proposal for maintenance.*

How to underwrite these warrants.

2d Warrant.—*At which time I shall consider the plaintiff's proposal for maintenance.*

3d Warrant.—*At which time I shall allow the plaintiff's proposal for maintenance.*

Note : If the father of the infant whose maintenance is settling before the Master be alive, an affidavit of his consent is necessary to be made and produced before the Master, but the same need not be filed.

Note :

Note: *It is impossible to point out or set down the various matters that are from time to time referred by the court to a Master; but the foregoing sketch will guide and assist the young solicitor in almost every thing of that kind that in the course of his practice can possibly occur.*

CASES OF PRACTICE.

No reference shall be made of the insufficiency of an answer, without alledging the special causes in the exceptions. A reference of the state of the case is but rarely granted, except by consent of parties, and the special order of the court, where the court orders the Master to state such a matter of fact specially to them.

A question touching the jurisdiction of the court cannot be referred to the Master; it must be heard and determined by the court.

After witnesses are examined in a cause, no matter therein can be referred to the Master, but by a special order of court, and that by consent of parties. *Vide Totb. 47, 48.*

On hearing causes, all matters of account, and other matters (*except in cases of very great weight*) which are determined by the court, are generally referred to a Master, with some directions from the court to him how to proceed therein in making his report. On application to the court by consent of parties, accounts may be examined into before the hearing; but the usual method is not to examine to a matter of account till after the hearing of the cause, which is to be before the Master if the witnesses be in town, &c. if not, then by commission directed by the Master on order. *Vide Ord. Chan. 156.*

Where

Where a matter of account is referred, the solicitor, before he forms a charge, takes out a warrant to produce *all books, papers, &c.* this is usually ordered by the decree.

If a Master cannot go through with a matter referred to him on the *second warrant*, the solicitor may take out a third, fourth, &c. *warrant*, till the matter is finished.

In matters of *account*, or *taxation of costs* before a Master, vouchers must be produced for things that do not apparently appear, it therefore behoves the party to collect and produce all papers and writings relating to the cause, which, if not admitted by the adverse party, must be proved before the Master can allow them.

On a reference before a Master, if either party admits a matter of fact, the Master should make an entry of such admission in his *minute-book*, which the party is to subscribe, whereby it becomes conclusive, and the other side shall not be put to a proof thereof afterwards. *Vide Ord. Chan. 254.*

In accounts referred, where there are sums of 40*s.* or under, on affidavit in support thereof by the party, they will be allowed by the Master, but if above that sum, they must be authenticated by witnesses to be examined thereto, unless on the adverse party's own admission.

A defendant having put in his answer to the plaintiff's bill cannot afterwards have it referred for scandal. *Vide Will Rep. vol. 2. p. 311.*

An answer cannot be referred for *impertinence*, though after an order to refer an answer for *insufficiency*, another order may be obtained to refer the same answer for *scandal*. *Ibid.*

Held by the court, that on a reference to a Master to state an account on a mortgage, that all monies paid as *surety* shall be considered as *principal* money from the time of payment, and interest be allowed thereon accordingly; *and also,*

also if lands in fee or for life be joined in mortgage, if the estate in fee be not sufficient at the time the life-estate shall be valued only as it was at the time *six or seven years* purchase, and not according to the enjoyment since, be it twenty years or more. *Vide Keble, vol. 2. p. 376. pl. 31.*

OF THE MASTERS REPORT.

THE master having gone through the matter referred to him, prepares a draft of his report, which is a certificate to the court, how the matters referred by the court are or do on examination appear to him.

The parties may take office-copies of such draft, and either side may take out a *four day warrant* on such draft.

How warrant on draft report is to be underwrote.

At which time the Master will sign his report.

Note : If either party has any objections to the Master's report, the same must be made in writing, and delivered to the Master's clerk, and a warrant must be taken out thereon, and underwrote as follows :

That objections are filed to the Master's report.

The adverse party takes an office-copy of these objections, when both parties attend the Master thereon, who allows or disallows these objections as he sees fit, and regulates his report to the court accordingly.

According

According to the regular practice of the court, no exception can be filed to the Master's report after a hearing, unless the adverse party first brings in objections to the draft of the Master's report, and he is heard on warrant before the Master thereon.

These exceptions must be filed with the Register, and a sum of *five pounds* deposited with him to answer the costs, if such exceptions are overruled on argument. This done, you must petition the Lord Chancellor for a day to set down exceptions to be heard. The petition being answered, draw up order thereon, pass and enter the same, then serve a copy on the adverse party's solicitor or clerk in court, which is deemed proper notice for their attendance, if they think proper. Before the day of hearing, the solicitor or his clerk in court makes a fair copy of the Master's report, and the exceptions filed thereto, for to lay before his lordship. This copy must be left with his lordship's gentleman with *five shillings*.

How to file exceptions to the Master's report and to argue same.

Between *A. B.* plaintiff,
and
C. D. defendant.
In Chancery.

EXCEPTIONS taken by, &c. to the report made the——day of——by Mr. *E.* one of the Masters of this honourable court concerning the insufficiency of the defendant's answer.

The said exception states, that the said Master having made his report against the said defendant's answer as insufficient, in that the said defendant hath not in his said answer set forth, &c. (*the matter excepted to as not being answered;*)

Form of exceptions to a Master's report of an insufficient answer.

Y

and

The Modern Practice of the

and whether he did not, &c. required by the plaintiff's bill. Now he excepts against the said report, for as much as the said answer is full and sufficient notwithstanding the said Master's report, there being no occasion, according to the rules and practice of the court, to set forth the same in the said answer, as this exceptant is of opinion, and submits to the judgment of this honourable court.

For which reason this exceptant prays, that the report may be set aside, and the answer adjudged sufficient.

C. D.

Note: The foregoing precedent altered according to the nature of the case, will be a sufficient guide to the young solicitor.

If the report is to ground a decree after it is signed by the Master to whom the matter is referred, no order can be made to confirm such report till the same is filed; therefore it is most prudent for the solicitor to file the report with the Register before he moves to confirm the same.

How to move for an order nisi on a Master's report.

The solicitor must instruct his counsel to move the court to confirm the report. It is a motion of course, and granted, *unless the adverse party, being served with such order, shall, in eight days after such service, shew cause to the contrary.*

Note: In the eight days allowed by the court to shew cause, the adverse party may file exceptions to the Master's report.

If it is made before hearing, such report requires no confirmation, but the party obtaining same may take out process of court to enforce the due performance of such report, unless the adverse party in due time, according to the rules of the court, obtains some order to delay or controul the same.

If no cause is shewn in the *eight days* after personal service of the order nisi, you must make an *affidavit* of the service of the same, and having filed such *affidavit*, you apply to the entering register or clerk for a certificate on such order, (which the entering clerk will get signed by the register) that no cause is shewn; pay him for the same 1 s. 6 d. on which *affidavit*, certificate and order, you instruct your counsel to move to make the order absolute; which done, the report is absolutely confirmed.

Note: *If the defendants live in distant counties, separate from each other, on an affidavit of the fact, the court on motion will allow, that service of the order on the defendants clerk in court shall be good service.*

This report, when made by the Master, should be immediately filed, and a petition must be presented by the solicitor to the Chancellor or Master of the Rolls, in order to confirm the same. A copy of the petition must be served *three days* before the day of hearing; the solicitor must prepare a brief of the petition, &c. and see counsel. He may in his petition either state the whole of the proceedings to the court, or only instructions, and so go on with the order of reference, and pray to have the report confirmed, and such allowance as mentioned in the report paid. At the hearing you must read to

As to confirming a report for a maintenance of an infant.

The Modern Practice of the
the court the office-copy or original report,
when the court confirms such report.

Note: This report must be filed before you can draw up your order made on the petition to confirm the same. The order, when drawn up, must be passed and entered at the register as a common order, and a copy or copies served on the party or parties.

All reports should be filed in four days after signing the same as directed by an old order of this court, which practice is now disused, and such reports are frequently filed after the above time. The clerk in the report-office marks on the back of the report the day the same is filed.

The Master charges for a report before hearing 15 s. and for a report after hearing 1 l. 5 s. The clerk in the report-office charges for filing the same according to the length. Vide Table of Fees of this Court, under the head Report-Office.

These reports are never served, nor is a report after hearing valid, till confirmed by an order nisi, as before set forth.

The adverse party, if he intends to oppose the confirmation of a report, should do it immediately after the same is filed, either in term, or during the seals that immediately follow such term, or he will be deemed by the court out of time.

CASES OF PRACTICE.

If counsel attend the Master on any matter referred to him, they are not to influence him, nor is any other person, so as to induce him to make a special report, unless he is so directed by the

the court, or his own judgment with respect to the difficulty of the case prompts him so to do. *Vide Ord. Chan.* 144.

If the court set a certain time for the Master to make his report in, and it is not made till after that time, it may be disallowed by the court. *Vide 1 Chan. Ca. p. 179.*

On arguing exceptions to a Master's report, no evidence will be allowed to support the same, but what was laid before the Master on the objections taken to the draft of such report. *Vide Primrose and Bromley, Michaelmas vacation 1739, and Michaelmas 1765, Camden Chancellor.*

If by special order exceptions are admitted to a report, whereby money is reported due after the usual time allowed by the rules of the court, no proceedings on such report can be stayed without the party giving security to pay such money or bring it into court, unless provided otherwise by particular order. *Vide Ord. Chan. p. 203.*

If the plaintiff moves to confirm a report *nisi*, and the adverse party shews for cause that he has taken exceptions, the plaintiff may likewise except to the Master's report, though it is his own motion. *Vide Moseley, p. 305. pl. 167.*

On a dismissal with costs to be taxed by a Master, the report need not be confirmed; but a *subpæna* for costs, after the report is filed, may be forthwith taken out. If an answer be reported insufficient, one *subpæna* for the costs, and another *subpæna* to make a better answer returnable immediately, may be issued immediately; that for costs must be served on the party personally, and that for a better answer may be served on the clerk in court or solicitor.

Note: It is but seldom, and that under very particular circumstances, that the court will stir a

The Modern Practice of the

report after it is confirmed; for the parties had sufficient time to except to it, more especially where it was confirmed by consent of parties.

It is now held sufficient, if a Master's report be filed before any proceedings, tho' not within *four days* after the same is made. *Vide Will. Rep. vol. 2. p. 517.*

It is not usual to confirm reports of receiver's accounts. *Ibid. p. 661.*

A cause cannot be brought on for the further directions of the court therein on the Master's report, till the same is confirmed. *Vide Moseley, p. 71.*

Where an answer is reported sufficient, the plaintiff is to pay the same costs to the defendant he would have been entitled to from the defendant, had the answer been reported by the Master insufficient. *Vide Gilbert's Hist. and PraB. of the Court of Chancery, p. 103.*

The exceptions filed to the Master's report must be signed by counsel. *Ibid.*

If the Master reports the defendant's answer insufficient in one single exception, the defendant must either submit to answer, or except to the Master's report. *Ibid. p. 104.*

If two or three exceptions are allowed by the court, they in general make him answer afresh. *Ibid. p. 105.*

A master's report, though it ought not to be conclusive, yet it is *prima facie* to be looked on as true, till falsified by an *affidavit* on the other side. *Vide Wm. Peer Wms. vol. 3. p. 142.*

OF CERTIFICATES.

THEY are in writing under the hand or hands of the Masters, six clerks, or other officers of the court, informing them of something

thing under their respective cognizance, that is *done, not done, or mis-done*, and which, by a particular order, or from their duty, they were required to inform the court of.

Note: *These certificates are held by the court of great authority, especially when given by the Masters and other established officers of the court.*

They are to be had of the six clerks, *for plaintiffs not proceeding after answer filed*, on obtaining which the solicitor moves to dismiss the plaintiff's bill; *also when publication is passed*, in order to set down a cause for a hearing; of the register, *that no cause is shewn to an order*, in order to make the same absolute.

Of whom these certificates are to be had, and for what purposes.

To enforce obedience to an order of the court, there are several processes issue; *for example*, where a bill is dismissed with costs, after these costs are taxed by the Master, and he has made his report, and such report is filed, you may take out a *subpœna* for the costs, which must be personally served on the party who is to pay the same, and the costs demanded; which if refused or evaded, on making an *affidavit* of the service of such *subpœna*, and the demand and refusal of the costs, this *affidavit* must be filed with the clerk of the affidavits of the court, and an office-copy thereof must be given to your clerk in court, which is his voucher for making out an *attachment* against the party, directed to the sheriff of the county where the party lives, whereby he is arrested, and on such arrest, if he refuses to pay such costs, together with 10 s. 6 d. for the arrest, he is carried to the county-gaol, there to remain till the same is paid.

If a defendant absconds, so that he cannot be served with a *subpœna* on *affidavit* of this fact,

you must move the court, that service on his clerk in court may be deemed good service, which is granted of course, and then on *affidavit* of service, and demand and refusal by the clerk in court, an *attachment* issues against the plaintiff as before, where he is personally served with a *subpoena* and refuses to pay the costs, and on the sheriff's returning the *writ of attachment*, *non est inventus*, a *writ of proclamation* issues against him, and on the same return a *commission of rebellion* directed to commissioners, and on the like return an *order* issues for a *serjeant at arms*; and on the same return and a certificate, you obtain an *order* for a *sequestration* directed to certain commissioners therein named, to *sequester* the party's real and personal estates, until he pays all costs, and the court make further order therein.

If a defendant is served with a *subpoena* to appear, and does not appear thereto, or if he does appear but does not answer, or is in contempt for not obeying an order of the court, the first process to be taken out against him is an *attachment of contempt*; and if such defendant absconds, the like processes to a *sequestration* as before; but if he is arrested on the *attachment* or any of the subsequent processes, he must pay the costs, and give the sheriff on the arrest a bond with sureties as on a common bailable process at law, to appear, answer, &c. If the defendant does not appear according to the tenor of his bond, and the writ for want thereof is returned by the sheriff *cepi corpus*, you may move the court for a *messenger* to go and bring him up that he may be committed to the *Fleet*, there to remain till he clears his costs and contempt, and appears, answers, or performs the order, *be it what it may*, for which he is in contempt.

Note

Note: All these different processes are made out and compleated by the plaintiff's or defendant's clerk in court, as the case may be; as both parties are equally liable on a contempt in disobeying the orders of the court.

FORMS OF CERTIFICATES.

Between *A. B.* plaintiff,
In Chancery. and
C. D. defendant.

UPON the——day of——, interrogatories were exhibited in my office by the complainant in this cause for the examination of the defendant, touching a contempt supposed to be by him committed for breach of an injunction obtained in this cause, since which time the said defendant hath not attended me to be examined thereupon. Dated this——day of——1776.

A certificate of a Master, that a defendant has not attended to be examined on interrogatories pursuant to an order of the court for that purpose.

J. E.

Between *A. B.* plaintiff,
In Chancery. and
C. D. defendant.

THESE are to certify, that the defendant's answer to the plaintiff's bill was filed the——day of——1776, since which there has been no further proceedings, as appears by my book. Dated the——day of——1776.

A certificate of a fix clerk of an answer being filed, and no proceeding since in order to dismiss the plaintiff's bill.

F. D.

The Modern Practice of the

In Chancery. Between A. B. plaintiff,
and
C. D. defendant.

A six clerk's certificate of no proceedings being had after a replication filed to the defendant's answer to dismiss bill. *THESE* are to certify, that the defendant's answer to the plaintiff's bill was filed the— day of — 1776, to which the plaintiff replied the— day of — in the same year, since which there hath been no further proceedings, as appears by my book. Dated the— day of — 1776.

F. D.

In Chancery. Between A. B. plaintiff,
and
C. D. defendant.

A six clerk's certificate of pleadings in a cause being filed, in order to set down the same for a hearing. *THESE* are to certify, that the plaintiff's bill, and the defendant's answer, and the plaintiff's replication to the defendant's answer are duly filed, as appears by my book, and I have seen the depositions published. Dated this— day of — 1776.

F. D.

In Chancery. Between A. B. plaintiff,
and
C. D. defendant.

The same. *THESE* are to certify, that the plaintiff's bill and the defendant's answer are duly filed, as appears by my book. Dated the— day of — 1776.

F. D.

Note: The foregoing certificate, and all others that may be necessary in the course of a suit are in general procured by the clerk in court, or the solicitor

for may draw out the same on half a sheet of paper, and get his clerk in court to sign the same, or procure it to be signed.

In the caption of answers taken in the country, (*which is a certificate of the commissioners*) the town and county where, and the day and year when the answer is sworn, ought to be inserted, otherwise the answer may be suppressed.

The same doctrine holds as to the *caption of affidavits, depositions, &c.*

The certificate of commissioners of any thing touching the execution of their commission need not be filed, before admitted to be read or made use of.

All matters relating to irregularities in mere matters of practice, the court on motion or petition usually orders the same to be referred to the two senior six clerks not in the cause, to *certify whether regular or not*, and by their certificate the parties must abide, as the court seldom, and on very particular reasons only, will permit the adverse party to except to the same.

To *dismiss a bill* on answer being filed *three terms*, and no replication filed by the plaintiff thereto, you leave a note with plaintiff's clerk in court, that you shall move to dismiss bill for want of prosecution, on which, if no replication filed in *two or three days*, you get the six clerk's certificate, and move the same accordingly with costs to be taxed by the master, and proceed thereon by warrant, as on a common reference to the Master.

On a *matter of account, &c.* referred to the Master, it is usual to *wave examining the wit-*

The Modern Practice of the

nesses till after the hearing, and it comes before the Master to examine witnesses with regard thereto, the Master, on request of the party, will grant a certificate for a commission, on which you move the court for the same.

On *interrogatories* for examining any of the parties on warrants before the Master, if the party on whom it lays to do the act, stands out the *three warrants*, the Master will grant a certificate of the fact, and, on application to the court by the adverse party, process of contempt will issue against him.

CASES OF PRACTICE.

On the Master's certificate, that writings were not delivered in, the clerk offered to prove they were delivered in; but the court would not suffer such proof against the Master's certificate. *Vide S. Cases in Chan. p. 5.*

If a defendant submits to a decree *nisi*, then on *affidavit* of the service of the *subpœna* to shew cause, and the register's certificate that no cause is shewn, the plaintiff's counsel move to make the last order absolute, on *affidavit* and certificate, which is a motion of course. *Vide Gilbert's Hist. and Pract. of Chan. p. 156.*

OF ORDERS OF COURT.

ALL orders are acts of the court, and must be complied with by the party or parties on whom made, or he or they will be subject to process of *contempt*. These orders are of two sorts, *viz.* general or interlocutory. If any matter

matter intervenes in a cause, which requires motions or petitions to set them right, they are called interlocutory orders, which are of several kinds, and are either of course or special. General orders are made on hearing counsel on both sides.

All orders must be pronounced in court, and drawn up by the register; if general, the sitting register draws up the same from his minutes taken at the hearing; an interlocutory order is drawn up on the petition; if on motion, by leaving the brief or other instructions, and the register's minutes. After the solicitor has procured the same, he returns it to be passed and entered, when the same may be served on the party or parties required to do the same.

If an order is only on one side, the entering register will enter it from the copy; if *special*, you must leave the order itself with the register to enter it by.

A common order on motion or petition, you pay 4 s. 6 d. for drawing up the order, and 1 s. 6 d. for entering the same. Special orders are paid for according to the length both in drawing and entering the same, as directed under the table of register's fees in this work.

Note: The register is not to draw up any order grounded on affidavit, unless such affidavit be first filed.

It is the duty of the register of the court to take down all orders faithfully, as pronounced from the mouth of the court; if it happens otherwise, the party injured on motion or petition may be redressed; if in *vacation*, and the matter requires expedition, it must be done by
petition

**The Modern Practice of the
petition to the Chancellor, or Master of the
Rolls.**

All orders, when entered, cannot be altered nor even discharged, but on good cause, and that by special direction of the court; when a person moves to discharge an order, he must have the same drawn up, ready to be produced to the court if called for, or his motion will be refused.

*As to orders
nisi.*

If you move in the morning to make an order *nisi* absolute, it is usually granted, if no cause is shewn before the rising of the court, it being held, that the party has all that day till the rising of the court to shew cause. On this motion an *affidavit* must be made and filed of the service of the order to support the same, without which the order *nisi* cannot be made absolute, though no cause is shewn on the other side, unless directed otherwise by the court. If orders *nisi* are not moved to be made absolute till after the day given by the court to shew cause, the solicitor must then not only produce the *affidavit* of service of the order, but also the register's certificate, that no cause is shewn to the contrary, before the court will make such orders absolute.

*As to the
service of or-
ders of court.*

The solicitor, his clerk or agent, must shew the original order to the solicitor or clerk in court on the other side, and at the same time deliver to him a true copy of such order.

Note: In special cases, as a writ of execution, if such order under seal be not personally served, the party is not brought into contempt, nor to be committed.

CASES OF PRACTICE.

By stat. 9 W. 3. cap. 15. submissions to an award may be made an order of this court.

A solicitor's assent to an interlocutory order binds his client, but not to a reference finally to determine. *Vide Chancery Cases, vol. 1. p. 57.*

If a person is brought into court to answer the breach of an order, if within the year, he must answer on interrogatories without a bill; if after the year, a bill must be filed to set forth the breach to ground the interrogatories. *Vide Dawv. p. 776.*

A mistake in the title of an order may be amended, though against a surety that gave a recognizance to abide the order of hearing. *Vide Vern. vol. 2. p. 376.*

No orders but final and decretal ones shall be received to be entered after eight days of pronouncing the same. *Vide Chancery Cases, p. 437.*

Note: This rule of practice is now dispensed with, and if the same is entered the term it is pronounced, it is sufficient. If not entered in due time, and it should become necessary to enter the same, you must by motion or petition obtain an order to enter it nunc pro tunc.

If an order is made on hearing the parties (by counsel) on both sides, such order need not be served. *Vide Moseley, p. 202.*

A. being beyond sea sued B. at law; B. brings a bill in equity against A.; this court will order, that service on the defendant's attorney at law shall be good service, but not that such attorney shall put in an answer without oath. *Vide Will. Rep. vol. 1. p. 523.*

Or

OF PAYING AND RECEIVING MONEY IN THIS COURT.

BY Stat. 12 Geo. 1. All monies, &c. decreed to be paid into court must be paid into the Bank, with the privity of the *Accomptant-General* of this court, and placed to the credit of the cause to which it belongs.

Note: Any of the parties to a suit in this court, where money is ordered by the court to be paid into the Bank, may apply to the court, that such sums, &c. may be placed out on Government securities, &c. for the benefit of the parties interested in the cause.

How to procure money, when paid in'o the Bank.

The party entitled to such money must give notice in writing to all the parties in the suit, which must be served on them personally, that he intends to move the court for the same, and on producing the *Accomptant-General's* certificate and the Master's report, the court will order the same accordingly. This matter being moved and ordered, carry your instructions to the register, who will draw up and pass the order, then get it entered with the entering register, (it need not be served on the parties). The order being passed and entered, get a certificate from the Report office; take order and certificate to the *Accomptant-General's* office, who (on your signing a proper receipt in his book) will give you a *cheque-note* on the Bank, which you must get entered at the Report-office, then carry order to the registers, who will sign the same, which done you may go to the Bank, and receive the money.

Note :

Note: None but the parties, or their legal representatives, can obtain a cheque-note from the Accomptant-General's office. Representatives must make it appear that they are such, by producing their letters of administration, probate of the will or assignment, as the case may be, before they can procure the money. If the person to whom the money is due cannot conveniently attend to receive the same, he must execute a letter of attorney, authorizing such person as he shall think proper to do the same, and on an affidavit of the due execution of such letter of attorney, which letter of attorney and affidavit you leave at the Accomptant-General's office, who thereupon gives the attorney appointed by the party to receive the money a cheque note on the Bank to receive the same.

By an order of this court, dated 2d July 1739, a sum of 35000*l.* belonging to the suitors of the court was placed out at 3 per cent. Bank Annuities, to cover and pay the following salaries to the officers in the Accomptant-General's office, viz. the Accomptant-General 650*l.* first clerk, 250*l.* and second clerk, 120*l.*; and which salaries were ordered by the court, should, from the 29th of September then next, be in full of all fees due to the said officers for any business done by them pursuant to *stat. 12 Geo. 1.*

The solicitor must draw and ingross a petition for that purpose, which must be directed to the Master of the Rolls, and personally served on all the parties to the suit. He must likewise get the Accomptant-General's certificate, and the Master's report. On the hearing of this petition a proper affidavit and certificate of the infant's being of age must be produced to the court.

How to apply to the court for money due to infants, when they come to age.

Note: Let the certificate be made on a sheet of double six-penny stamped paper, and write the affidavit

The Modern Practice of the
affidavit under the same, which will save the
party 2 s. 6 d. by preventing the certificate be-
ing annexed, and thereby made an exhibit.

CERTIFICATE.

A certificate
of a person's
being of age.

1776 May 4. *I. R. (son or daughter) of
William and Sarah R. was baptized.*

The above is a true copy of the registry of
the parish of _____ in the county of _____
(naming the parish and county). Witness my
hand this _____ day of _____ 1776.

R. R. clerk.

AFFIDAVIT.

Between *A. B. plaintiff,*
In Chancery. and
C. D. defendant.

Form of the
affidavit to
be wrote un-
der the above
certificate.

T. T. of Ec. clerk to Mr. J. A. solicitor for
the plaintiff in this cause maketh oath, that the
above mentioned extract signed by *R. R. of the*
parish of _____ aforesaid, is a true copy or ex-
tract of the registry of the said parish so far as
concerns the baptism of *I. R. (son or daughter of
William and Sarah R.)* and that he, this depo-
nent, did on the _____ day of _____ last, exa-
mine the said copy or extract with the said
parish-register, and that the name *R. R.* set and
subscribed thereto, is of the proper hand writing
of the said *R. R.* who set and subscribed his
name thereto, in the presence of him this de-
ponent.

T. T.

Sworn, &c.

Note:

Note: For the above certificate you must apply to the clerk of the parish where the infant was born, and get him to extract out of the register-book of baptisms there verbatim the birth and christening of the infant; you carry with you a sheet of double six-penny, on the top of which he writes the above certificate.

OF INJUNCTIONS TO STAY SUIT, &c.

IT is a writ remedial issuing out of this court in nature of a writ of prohibition. This writ may be granted, either to stay proceedings at law, or to stay waste or damage to the freehold or inheritance of another person, by selling timber, &c. It may be obtained to compel a person to yield up quiet, or to continue in peaceable possession of lands, &c.

The injunction for peaceable and quiet possession is a *judicial writ*, and obtained subsequent to the decree, having the effect of a writ of execution, or the *habere facias possessionem*.

In common cases, injunctions are granted to quiet possession before the hearing of a suit.

If an injunction is granted to stay proceedings, it is usually on the plaintiff's allegation, that the defendant has begun, or threatens to use rigorous proceedings at law against him. If the cause at law is at issue, or a declaration delivered in that cause, such injunction gives leave to the plaintiff at law to go to trial, &c. but stays execution till further order of the court where the matter at law is tried; it usually bars execution, though not judgment; where the judgment

ment is executed, it will stay the money levied in the sheriff's hands.

Injunctions to stay waste are usually granted to one in reversion or remainder against a tenant for life, or other particular tenant, if waste is begun, or there is reasonable ground to expect it, this writ may be obtained. Though a bill is filed praying an injunction, yet, to obtain the same, an *affidavit* must be made, shewing to the court, how the party derives his title to the estate in question in the cause, and that some waste or spoil is done or threatened, it is sometimes (*though but seldom*) granted without an affidavit to support the same.

How these writs are obtained, and for what.

This writ is usually obtained by order of court on motion, either on matter confessed in the defendant's answer, or on some matter of record, or on some deed, writing or other evidence produced in court, by which it appears there is a probability that the party ought to be discharged in this court from such suit. An injunction, after the defendant has put in his answer, is never obtained without the plaintiff's clerk in court or solicitor giving notice in writing to the adverse party *two days* before such motion, in order that he may be apprized thereof, and defend the same if he thinks proper. This writ may be procured on an *attachment*, or on a *dedimus potestatem*, or on a defendant's praying time to answer, or where it is an old debt which has laid long dormant, or where the creditors and debtor have been dead long before the suit, or where the defendant cannot be found to be served with a *subpœna*.

Note: In all cases where an answer is put in, the party applying for an injunction should give the adverse party *two days* notice of motion.

These

These writs are usually granted and discharged on motion. If necessary to be obtained in *vacation*, when the court do not sit, and no application to the court can be had, if a bill is filed for staying waste, and the defendant continues to commit waste, then on *affidavit* of the fact, the *Lord Chancellor* will on petition grant an injunction to stay the defendant from committing such waste. *Vide Head Petitions.*

If the defendant to an injunction bill does not appear in time, the plaintiff's solicitor may draw and ingross an *affidavit* of service of the *subpoena*, and get the same sworn and filed, on which he may obtain an *attachment* for want of an appearance, and then instruct counsel to move for an injunction, which will be granted of course.

These writs (*in this case*) generally give the plaintiff at law liberty to call for a plea, and proceed to trial, and for want of plea to enter up judgment, but execution of such judgment is stayed by this writ.

If, on the defendant in this court being served with this writ, he has not arrested the plaintiff at law, nor filed his declaration, he cannot afterwards do it till such injunction is dissolved; if he does, he is thereby guilty of a breach of such injunction, and the court will commit him to the *Fleet* for the same.

If the defendant appears to the bill filed in due time, and does not answer in time according to the rules of the court, then on an *attachment* for want of an answer, or on the defendant's craving a *dedimus potestatem* to answer in the country, or getting time to answer the plaintiff's bill, an injunction will be granted, which is generally

The Modern Practice of the
generally until answer put in and further order.

Note: *These injunctions are generally with the clause of giving liberty to call for plea, &c.*

If after appearance and answer put in, in time, the court must be applied to for such writ on the merits, which must be done by making a brief of the pleading for counsel, and giving notice to the adverse party as before directed.

If a bill is brought to stay waste or suits at law, you may procure a *subpœna* before the bill is filed on *stat. 4 & 5 Ann. cap. 16.* The bill must be filed at or before the return of the *subpœna*; and, after the same is filed, and the defendant has appeared, you may, on filing an *affidavit* of waste, &c. on notice of motion, procure an injunction on the *merits*.

Directions
for dissolving
injunctions.

As to dissolving injunctions, when an injunction is procured on an *attachment* for want of an appearance or answer, it behoves the defendant to take particular care to put in a sufficient answer, and pay or tender the costs of the *attachment* to the plaintiff's clerk in court; (*these costs are 10 s.*); and, as soon as the answer is put in, instruct counsel to move to dissolve the injunction *nisi*. This order must be drawn up, which done, serve copy on the adverse party's clerk in court or solicitor. On the day appointed to shew cause, if no cause shewn, the injunction will be dissolved of course, on defendant's counsel moving to make the rule absolute, and producing an *affidavit* filed of the service of such order *nisi*. If cause is shewn on the merits, the injunction is sometimes continued to the hearing.

If the plaintiff has filed exceptions to the answer, and shews such exceptions for cause why
the

the injunction should not be dissolved, he is sometimes ordered to procure the master's report thereto in a *week*, though commonly in *four days*; or, if not done, the injunction to stand dissolved without further motion. If the Master should report the answer insufficient, the injunction will be continued till the defendant has fully answered the plaintiff's exceptions.

An injunction on a *dedimus potestatem* will be granted by the court of course, till the coming in of the defendant's answer, and other order made therein.

It is also a motion of course to dissolve an injunction on the coming in of the defendant's answer, unless cause shewn.

When the answer is come in, if the defendant's counsel alledge, that he has answered or denied the whole equity of the plaintiff's bill (*bis contempts, if any, being first purged*) the court on this ground will order the injunction to stand dissolved *nisi* at a short day, and at that day, if no cause is shewn, then on *affidavit* of service of the order *nisi* and motion will make the order *nisi* absolute. If the contempts are not cleared, or if the answer be not filed, and all equity in the plaintiff's bill denied, or if the exceptions are put in, and the Master has reported the answer insufficient, any of these are good cause against dissolving the injunction.

Where there be two defendants in a suit, against whom an injunction is obtained, the court will seldom dissolve such injunction till they have both answered.

Where the plaintiff has equity on his side, or it is a hard case, the court will not be easily induced

The Modern Practice of the

duced to dissolve the injunction; nor, if they do, will they do it at the last seal after term; nor is it ever done, but on motion of the adverse party.

An injunction granted on the merits, or on some special cause of equity, commonly continues till the hearing, unless the plaintiff delays his suit.

An unreasonable delay is a good and sufficient cause for dissolving an injunction for staying a suit at law, yet the court will sometimes on motion revive such injunction, although dissolved, especially where equity appears evidently for the plaintiff, or his case is hard.

If a plea or demurrer is argued by counsel, and allowed, the injunction generally is dissolved, though this is not always the case, for possibly the plaintiff may shew some equity arising out of the defendant's answer to induce the court to continue the injunction.

On a plea or demurrer being allowed, or on the coming in of the defendant's answer, the court will not absolutely dissolve the injunction on the first motion, though on *affidavit* of notice of motion, but only grant an order *nisi*, in order to give the adverse party liberty to shew cause, if he thinks proper.

As to exceptions to an answer without the Master's report of its insufficiency.

If exceptions are filed to an answer, and the Master has not reported the same insufficient, this will not be a sufficient cause to apply to the court for an injunction, as such exceptions may be filed only for delay, and the court will not presume them valid, till ascertained by the Master's report

An

An injunction may be continued on exceptions, and the court will not dissolve an injunction, if they have not been filed a reasonable time before such motion is made.

If the Master's report is not procured in a reasonable time after exceptions filed, or if the defendant's answer is reported *sufficient* on motion, the injunction will be dissolved *nisi*, and sometimes the order will be absolute on the first motion.

It is served by shewing the same under seal, and delivering a true copy thereof to the party or parties. The service must be personal on the party himself, his solicitor or clerk in court, or such of them as can be found. How to serve an injunction.

Note: *It has been held, that leaving a true copy of the injunction with the solicitor or clerk in court, and their clerk or agent, is good service of such writ.*

If when the party is served with an injunction to stay proceedings at law, if his attorney proceeds in the suit, the plaintiff's solicitor must draw a notice of motion, and serve the adverse party therewith; *the purport of which notice is, that the court will be moved, that the party who has committed a breach of the injunction, may be committed to the Fleet.* Having filed an affidavit of service of the notice, your counsel moves the same; if it is not opposed by the adverse party on the motion, the court usually gives a day to shew cause, when on reading the *affidavits* on both sides (*if cause is shewn*) the court determines whether the party is guilty of the breach of the injunction, or not. If guilty, the court makes an order for his being committed to the Fleet, from whence he cannot be discharged till

How to attach a person who disobeys this writ.

he has paid all costs, and in some cases till he has made restitution to the plaintiff for all damages he may have sustained by a breach of the said injunction.

How to set aside an injunction where the same is irregularly obtained.

If an injunction is irregularly obtained, the party injured must move the court to refer the same to a Master. If he reports the same irregularly issued, the adverse party may take exceptions to the Master's report, and file the same with the register, and deposit 5*l.* with him, who sets down the exceptions for argument; and, according to the event of such argument, the parties stand or fall. If no exceptions are filed, the court on motion, on the Master's report, will dissolve the injunction, and sometimes order the clerk in court to stand committed to the *Fleet* for making out the injunction, and also make him pay all costs, and likewise, under particular circumstances, the damages the other side may have sustained by issuing the said injunction.

CASES OF PRACTICE.

If a person is sued at law for the irregularly serving any process of this court, an injunction may be obtained on motion, on an *affidavit* of the fact, because matters of that sort are only punishable in this court. *Vide Vern. Vol. 1. p. 269.*

An injunction can never be granted before a bill is filed, but under some very particular circumstances. *Vide Inst. 4. p. 92. Equity Cases Abr. p. 285. pl. 6.*

An injunction on an *attachment, dedimus potestatem*, or on the defendant's praying time to answer, does not extend to stay proceedings in the *Spiritual* court, without a special order for that purpose. *Vide Will. Rep. vol. 1. p. 301.*

Where a plea is ordered to stand for an answer, the defendant cannot move to dissolve the injunction on the first motion; it must be only to shew cause. *Vide Moseley, p. 198. pl. 111.*

An injunction is sometimes continued only till such time as some of the defendants have put in their answers to the plaintiff's bill. *Vide Vern. Rep. p. 354.*

An injunction may be obtained after answer and demurrer on the plaintiff's having amended his bill. *Vide Gilb. Hist. & Pract. in Eq. p. 183.*

The plaintiff cannot move for an injunction after a plea is put in to his bill, till such plea has been argued. *Vide Will. Rep. vol. 3. p. 396.*

If a lessee for life, the reversion or remainder in fee, and a lessee in possession wastes lands; though he is not punishable for waste by the common law, yet he shall be restrained therefrom in this court, it being a particular mischief. He is not punishable during the continuance of the remainder, yet after such remainder is determined, he is. *Vide Roll. Abr. vol. 1. p. 337. S. P. Moor p. 554. Totb. p. 61. Car. p. 26. 36. Vern. vol. 1. p. 23. Co. Lit. p. 154. Inst. 2. p. 301. 5 Rep. p. 76. Hard. p. 96. Totb. p. 144. 83. 143. Chan. Rep. vol. 1. p. 14. 106. 116. Chan. Rep. vol. 2. p. 94. Totb. p. 188. Chan. Rep. vol. 2. p. 242. Vern. vol. 1. p. 23. Chan. Rep. vol. 2. p. 32.*

If an injunction is shewn when the copy is served on the party, the party serving the same is not bound to deliver the injunction to the party on whom he served the copy, in order that he may compare the same. *Vide Chan. Cases, vol. 2. p. 203.*

An injunction for want of answer, if withheld an unreasonable time after it issues from being served, so that the defendant has put in his answer before the injunction is served, it will be dis-

The Modern Practice of the

charged on application to the court for that purpose. *Vide Kel. vol. 2. p. 564. pl. 29.*

An injunction, though irregularly obtained, must be obeyed, or the party will incur a contempt; his remedy for redress is to apply to the court to set the same aside for such irregularity. *Vide Chan. Cases, vol. 2. p. 203.*

A perpetual injunction may be obtained against a bond of 50 years standing. *Vide Finch. p. 77.*

An injunction cause, where it abates by the death of either party on motion, may be revived within a stated time settled by the court, or the injunction to stand dissolved.

An injunction cannot be continued against the penalty of a bond, unless the money is brought into court, or judgment confessed at law with a release of errors. If the plaintiff is not of sufficient ability, the court will not suffer the defendant to proceed at law to a second *scire facias*, so as to make the bail liable to an action on the case. *Vide Chan. Cases, p. 444.*

After a verdict obtained at law, the debt and damages given must be deposited before the court will grant an injunction. *Ibid. p. 447.*

An injunction may be obtained to stay money in the hands of the Sheriff, so also after a writ of error; but, on motion, the court will suffer the defendant to affirm his judgment at law. *Ibid. p. 448.*

On cross bills between the parties, on the first bill being answered, and the plaintiff therein does not answer the second bill in eight days, the injunction obtained on the first bill may, on motion, be dissolved. This court will stay a lessee by injunction from committing waste, (though not always a mortgagee); this writ is granted by the court only against those who hold mediately or immediately under the person who

who prays such injunction. *Vide Chan. Cases, p. 450.*

An injunction may be obtained by one defendant against another. *Vide Ayl. p. 47.*

An injunction may be had against a member of parliament till he puts in his answer, and the court makes further order therein. *Vide Vern. p. 324. 329.*

An injunction bill may be brought against a parson by his patron, to prevent his committing waste on the glebe. *Vide Barn. Reps. p. 399.*

On a bill brought to set aside a will of a personal estate for fraud, the court will deny an injunction. *Vide Wm. Peer Wms. vol. 2. p. 287.*

After defendant has appeared to the plaintiff's bill, no special injunction can be obtained by motion without notice. *Vide Vezey, vol. 2. p. 112.*

An injunction may be granted to stay waste, or where the right appears on record, or for stopping up lights. *Vide Vezey, vol. 1. p. 476.*

A perpetual injunction for quieting a person in the possession of his estate is generally granted either upon a plain equitable title, or where one, two or more verdicts at law have gone against the disturber. This injunction operates to quiet the possession of the plaintiff and his heirs for ever, and all person or persons claiming by, from or under him. *Vide Gilbert's History & Practice of Equity, p. 195.*

An injunction may be obtained to prevent a multiplicity of suits, and the court will direct a verdict at law to determine the whole. *Ibid.*

The court never denies an injunction in *ejectment*, where the parties agree to give judgment in *ejectment* to prevent a trial to give a release of errors, and to consent not to bring a writ of error, to which they sometimes expect to be added,

The Modern Practice of the

to deliver possession, as the court on bearing shall direct. Ibid.

If a person builds on another man's ground, an injunction may be obtained to stay such erection, till answer put in to such bill, and the court directs further therein. It may be obtained for stopping up antient lights, and also on a patent for preventing the printing of almanacks; but here the patent under seal must be produced in open court. Ibid. p. 193. 194.

Note: Where a bill suggests, that the suit at law is against conscience; if the defendant is in contempt for not answering, or prays time to answer, it is held by this court to be contrary to conscience to proceed at law in the mean time, and in such case an injunction is granted of course. Ibid. p. 194.

These injunctions only stay execution touching the matters in question between the parties, and in the writ of injunction is inserted a clause to allow the plaintiff at law to call for a plea to proceed to trial, and for want of the same to obtain judgment, but execution is thereby stayed till answer put in, and the court gives further order in the matter. Ibid.

OF PROCESS OF CONTEMPT.

AS the writ of *subpœna* is the first process to bring a person into answer in this court, so is an attachment the first process of contempt for disobeying the rules and orders thereof.

It is unnecessary to trouble the young solicitor with precedents of the different writs that must issue in consequence of an attachment, if the party stands out, in order to produce the effect
of

of an execution at *common law*, because these writs are most commonly, and indeed with greater safety, made out by his clerk in court, whose particular province it is. However, as it is, for his credit's sake, requisite for him to have a general idea of the nature and effect of these writs, the following sketch may not be found useless.

AN ATTACHMENT

Is the first process of contempt in this court, and is always founded upon some contempt of the court,

The word is derived from the *French*, signifying *to take or apprehend by commandment of a writ or precept*. It differs from an arrest, in that he that arrests a man, carries him to a higher power to be disposed of; but he that attaches, keeps the party attached, and presents him in court at the day assigned, as appears by the mandatory words of the writ, *viz.* "*Præcipimus tibi quod attachies talem, & habeas eum coram nobis, &c.*"

An attachment returnable *three* or *four* days after the *teste*, if you arrest the body, it is good; but if you suffer the return to expire, and do nothing on it, and you are obliged to make out another attachment, you will be allowed but for one writ, in case you do any thing upon the second.

After a writ of execution, and an attachment returned for not performing a decree, the court will not give the defendant leave to be examined, unless he gives security.

The Modern Practice of the

By the King's death, all process of contempt not executed is determined, so that you must begin again at an attachment; but where process is executed, and a *cepi corpus* is returned, then the process stands good, *Vide Vern.* 300. c. 295.

On an attachment sued out, and executed three days after the king's demise, though before publick notice of his death, *adjudged* good, and well executed, and the proceedings thereon regular. *Vide Vern.* 400. c. 372.

Note: This writ is generally obtained of course, on *affidavit* that the defendant was served with a *subpœna*, and appeared not: or it may be had after an appearance, for want of an answer, without an *affidavit*; but it must be on an *affidavit* for the non-payment of costs; or the non-performance of an order or decree.

A solicitor must serve his client with the order for taxing his bill of costs, and the Master's report, whereby such costs are ascertained, before he can take out an attachment for them. *Vide Barnard Rep.* p. 266.

In these attachments, and all other writs, regard is to be had to the jurisdiction and privileges of certain places, as the *Cinque Ports*, and the Counties Palatine of *Lancaster*, *Chester*, and *Durham*; and the direction of the writs in such cases is of a peculiar form.

Note: In all cases where the Sheriff does not make his return of the writ, if directed to him, this court will amerce him; which amerciaments are to be estreated into the Exchequer, and are commonly five pounds. The court usually gives the Sheriff a day for that purpose, and if he do not by that time
return

return the writ, the court sets the amerciaments: Though sometimes, on notice of a motion being served on the Sheriff or Under-Sheriff, they will order him to stand committed to the Fleet prison for not returning the attachment or other process.

If an attachment is directed to the Sheriffs of London or Middlesex, or any other corporation who have a grant of the fines and amerciaments, as London, Middlesex and Bristol have, and if the party is taken up on the attachment, and a *cepi corpus* returned, at the time of making the motion, the party must produce the attachment and return to the court, who orders the party to be taken into the custody of the messenger till he has answered the bill, cleared his contempts and further order. The reason of this procedure is because the *estreats* and *amerciaments* go to the Sheriffs themselves, and there is no other way left to do justice to the plaintiff, but by ordering the defendant to be taken into custody of the court's own officer: For the court cannot *estreat* the Sheriff as in other cases for not making a return, or not bringing in the body, by reason the *estreats* go to the Sheriff.

The Sheriff cannot take bail on an attachment for not paying costs, but a messenger goes to bring in the party. *Vide Prec. in Chan.* 331. *Gilb.* 85. *Com. Rep.* 264. *R. Raym.* 723. *contra* 2 *Will.* p. 657.

Attachments must be entered in the register's book, (formerly they were also entered in the house-book; but this practice is now disused) expressing the cause of issuing the attachment. But the party that makes out the attachment usually first acquaints the adverse party's clerk in court; though this is a matter of favour, and not absolutely necessary.

The Modern Practice of the

An attachment after a decree for dismissal is in nature of an execution at common law, and a general pardon may pardon the contempt, but not the debt. *Vide Finch p. 253.*

If an affidavit of service of *subpœna* be filed before the return of the attachment, the arrest has been held good. *Vide 1 Vern. 172.*

Attachments, on which an order for a serjeant at arms is grounded, must be entered in the register's office, or else it is irregular. *Vide Wm. Peer Wms. vol. 2. p. 657.*

If the party's clerk in court be dead, no process can be taken out against him, until he has appointed another, for which purpose a *subpœna ad faciend. attorn'* must be taken out, the leaving of which at the house of the party is good service. *Vide Wm. Peer Wms. vol. 1. p. 420.*

Note: When a party is taken up upon an attachment (for any of the before mentioned purposes) he must pay costs, and either give his bond with sureties for his appearance, or enter his appearance with the register. And after an attachment with proclamations returned, no commission to answer shall be made, nor no plea or demurrer admitted, but upon special order obtained for liberty to put in such plea or demurrer.

When an attachment is duly obtained, it cannot be discharged till the defendant has paid the costs, or tendered them to the plaintiff's clerk in court; but either on payment, or tender, and filing his answer, plea or demurrer, he is discharged of course.

Note: For the attachment with proclamations, See Head Reference to the Master, p. 474.

Where

Where a corporation, as the Mayor and Aldermen of *London*, or any other corporation, are made defendants to a bill, or to perform the decree of the court, such corporations cannot be attached; but instead of an attachment you may make (of course) a *distringas* to the Sheriffs of the city, or to the Sheriff of the county where such corporations are resident.

The court sends attachments to the Warden of the *Fleet*. *Vide Wm. Peer Wms.* vol. 3. p. 55.

The Sheriff is the proper officer to execute the process of this court, but where he is a party, or otherwise incapacitated, it must be directed to the coroner. *Vide Wm. Peer Wms.* vol. 3. p. 53.

A D I S T R I N G A S.

This writ must also be entered with the register in the same manner as you do an attachment. It is a close writ, and made up as an attachment, and when sealed you must deliver it to the under-sheriff, who is bound to make a return thereof; after it is returnable, there must be *fifteen* days between the *teste* and *return*. When the Sheriff has made his return, you carry it to your clerk in court, who thereupon makes out an *alias distringas*, which is the same with a *distringas*, only after the words *We command you*, insert *as we have before commanded you*, to make a distress upon the lands, tenements, &c. and deliver this *alias distringas* to the under sheriff, which must also have *fifteen* days between the *teste* and *return*: The same being returned by the Sheriff, you carry it to your clerk in court, who thereupon makes out a *pluries distringas*, which is the same with the *distringas*, only after the words *we command you*, insert, *as we have*

twelve before commanded you, to make a distress on the lands, tenements, &c. This writ being also returned by the Sheriff, you get your counsel to move for a sequestration, (upon a pluries distringas returned) against the said corporation, to sequester all the lands, tenements, goods and chattels of the said corporation, until they appear to answer the plaintiff's bill, or perform the decree, and the court make other order to the contrary, which sequestration cannot be discharged till the corporation has performed what they are enjoined to do, and paid the costs of the several distringas's, and the sequestration, and the commissioners their fees for sequestering; and then they move to discharge the sequestration, which will be discharged of course.

If the defendant (against whom this process issues) be a member of parliament, he must be served with a subpoena when privilege of parliament is out, and if he refuses to appear to the bill in due time according to the course of the court, you make an affidavit of the service of the subpoena, and a copy of the bill, and move for a sequestration against the defendant, to sequester his personal estate, and the rents and profits of his real estate, which the court grants of course, unless the defendant, being personally served with such order, shall, within eight days after such service, shew unto the court good cause to the contrary: If after the defendant is served with this order, and he still persists in refusing to appear to the plaintiff's bill, then on an affidavit of the service of this order, you may move the court after the eight days are expired, to make the order absolute: And when such order is drawn up and entered, you may have the sequestration made out against the defendant; and the same method is observed against a defendant a member of parliament for want of his answer,
or

or for *non performance of a decree, &c.* after being served with a writ of execution thereof; for his body cannot be attached by reason of his being a member of parliament.

Where a cause against a peer or a commoner stands in the paper, and is called on, but the plaintiff cannot proceed, privilege being in the case, the privileged person must have his writ ready to produce to the court.

A COMMISSION OF REBELLION.

THIS writ is usually directed to such commissioners as the plaintiff names, which are commonly four or more, as the plaintiff or his solicitor shall chuse. If the return be of any long distance, &c. and the party offers good bail, the commissioners ought to take it, and not to keep him lingering in prison, in their houses. *Vide 2 Chan. Rep. p. 262.*

If the commissioners refuse to return the writ, the court, on motion or petition, will order them to return it; which order, if on service they obey not, process of contempt may issue against them.

Where private persons are made commissioners, if they take the party, and suffer an escape, the court on *affidavit*, and motion, and a day given to shew cause to the contrary, will order them to be committed till they bring him in, or pay the debt, &c. *Vide Toth. p. 38, 39.*

Note: It is necessary and usual for the commissioners to take a bond from the person so in contempt,

The Modern Practice of the

contempt, with one or more sureties for his appearance, unless it be for payment of money decreed, or not performing a decree; in which case the commissioners ought not to take bail, nor suffer the defendant to enter his appearance with the register, but the commissioners ought to bring the defendant into court, and get counsel to move the court, that the defendant may be turned over to the *Fleet* prison, where he is to remain till he has paid the money, or performed the decree, and cleared his contempt; and then the court will order him to be discharged: If any person shall rescue him, the court will order the rescuer to stand committed.

A wife was taken upon this process, and carried bound to prison, and kept very close, the husband not being taken; the court ordered that she should be discharged, and costs paid her, as well in respect to the bringing her in without her husband, as her being so hardly dealt with.

The commissioners have power, by their commission, to call in any person or peace-officer, to assist them in taking the rebel; and they may, with the assistance of a constable, break open his house to take him, by reason of his contempt to the King and the law, which they cannot do on an *attachment*, or an *attachment with proclamation*.

After a man is taken upon this commission, the justices of the peace cannot bail him, although it is an offence against the public peace; but the commissioners may, which is usually done in their own names, with condition for the defendant's appearance.

Upon

Upon his being admitted to bail, he ought to pay costs of his contempt.

If the defendant is in contempt to a serjeant at arms for not answering, and then puts in an insufficient answer, and the plaintiff's clerk in court accepts the costs, it purges the contempt, and the plaintiff must begin again with an attachment, the first process; but if the costs be not accepted, the plaintiff may go on with his process for contempt where he left off, for a farther answer. *Vide 2 Will. Rep. 481.*

A SERJEANT AT ARMS.

AFTER an order for a serjeant at arms shall be granted, the register shall draw up the same, and at the request of the serjeant at arms, deliver it to the serjeant or his deputy; and the said order is not to be discharged, nor the contempt thereupon, without the serjeant's fees being paid, and a certificate under his hand testifying the same. *Vide Ord. Chan. 4 Nov. 26. Car. 2. 1674. And this order is revived by order bearing date July 13. 1 Jac. 2. 1685. This farther order is also revived by an order of 12th June, 6 W. 3. 1694. whereby it is likewise ordered, that the counsel moving for a serjeant at arms, shall immediately, in court, deliver to the register the commission of rebellion, and if required name the clerk in court.*

By order, bearing date May 13. 7 Geo. 1. 1721. on the petition of the serjeant at arms, that he is entitled to take all persons into custody who stand in contempt to a commission of rebellion; the Chancellor declared, that no sequestration

The Modern Practice of the

sequestration could regularly issue to sequester the estate of any person who cannot be found; but on the return of *non est inventus* of the serjeant at arms; and therefore ordered, that from henceforth, where any person was in contempt, either for want of an appearance or answer, or for not yielding obedience to any order or decree of this court (unless for contemptuous language, or the beating or abusing any person in the service of the process of this court, or other contempts of the like nature) the serjeant at arms should apprehend and bring the contemner to the bar of this court to answer such contempt; but if the contemner could not be found, then to return *non est inventus*, to the end a sequestration might regularly issue, according to the ancient usage and practice of this court, and that process should for the future issue accordingly; and that it should be made a part of all orders for giving time to answer, or for doing any other act, upon the party's entering his appearance with the register; that the party, when he enters such appearance, should likewise consent that a serjeant at arms should go against him, as upon a commission of rebellion returned *non est inventus*, in case of non-compliance. And the said order was ordered to be hung up in the register's and fix clerk's office, that all persons might take notice thereof, and yield obedience to the same. *Vide Receipts in Chan. p. 553, 554.*

A SEQUESTRATION.

THE commission of sequestration is generally directed to four or more commissioners, empowering them to seize the defendant's real and personal estate into their hands, and

and to receive and sequester the rents and profits of his real estate until the defendant shall have answered the plaintiff's bill, or performed some other matter which has been ordered by the court, for not doing whereof he is in contempt, as aforesaid.

The plaintiff's counsel may move and obtain an order for tenants to attorn and pay their rent to sequestrators, or for sequestrators to sell and dispose of the goods of the party, and keep the money in their hands, or bring it into court, as the court shall direct.

These commissioners are accountable to the court, and are to act, in the execution of their office, according to the directions of the court, and they are to make return from time to time of what they have seized, as the court directs, and are to account for what comes to their hands, and to bring the money into court, as the court shall direct, to be put out at interest, or otherwise, as shall be found necessary. But this money is not usually paid to the plaintiff, but is to remain in court till the defendant has appeared or answered, and cleared his contempt; and then, whatever has been seized by virtue of the sequestration shall be accounted for, and paid him. As these commissioners have the whole in their power, they may act therein agreeable to the equity of the case. And the plaintiff's counsel may move and obtain an order for tenants to attorn, and pay their rent to sequestrators to sell and dispose of the goods of the party, and to keep the money in their hands, or bring it into court, as the court shall see fit.

The first process of contempt against a menial servant of a peer is a sequestration *nisi*. *Vide Wm. Peer Wms. vol. 1. p. 535.*

AS

AS TO AGREEMENTS MADE BETWEEN PARTIES MADE A RULE OF THIS COURT.

IF these agreements are intended to have the sanction of the court to confirm them, they must be signed by the parties, their clerk in court, and solicitors, when counsel must move to make the same an order of court. The court, on this motion, will inquire, whether no *infant* or *feme covert* is concerned in the matter; if not, and the matter appears fair and clear to the court, they will make a rule thereon.

OF COSTS IN THIS COURT.

As to costs
between
parties.

IT is a general rule of this court, that if they decree the party to pay costs *personally*, such costs are taxed by the Master, and you proceed by *subpœna* and *attachment* for recovery thereof: If the court directs that they shall be paid out of a real or trust estate, and not by the person of the party, when the estate is sold, the costs are usually paid out of the purchase money, or out of the profits in the receiver's hands; or if the party who is to pay them, has sufficient profits in his hands, the court will direct him to pay them thereout, or refer the matter to a Master, whether there is sufficient for the purpose, or not.

Infants pay no costs on a bill filed by their *prochein amy*. *Vide Strange*, p. 708. *Select Cases*
in

*in Chan. p. 49. Will. Rep. vol. 2. p. 297.
Equity Cases Abr. vol. 2 p. 38. pl. 18.*

It was ordered in Lord Keeper *Wright's* time, that no exception should be allowed to a report of taxing costs, which rule has been pursued ever since, with this difference, that where the Master allows such costs as ought not to be allowed by law, in such cases, (which seldom happens) the court will indulge the party to except touching this point.

The court never refuses on a clerk or solicitor's petition to have his bill taxed; and it was settled on debate, that the court cannot order the client to pay what is taxed, because it may be recovered by law, though it is otherwise on a client's petition to submit to payment of what is due; in that case the clerk or solicitor, where the bill is taxed, may take out a *subpœna* for the costs, and proceed by *attachment*, as in other cases; and this becomes a personal demand on his client.

As to scandals in bills, answers, &c. there are many cases where though the words in the record are very scandalous and highly reflecting on the party, yet the court does not think them so; especially where they are material, and tend to a discovery of the very matter in question; for a man may be guilty of a very notorious scandal, or of a scandalous action, as in case of a brokerage bond given before marriage to draw in a woman to marry, where a man is represented to have a great estate, and such like: Indeed they judge whether the matter may *prima facie* be scandalous; yet if it is of absolute necessity so to be, the court never looks upon it to be scandalous.

Where

Where the scandal is altogether malicious and foreign to the point in question, in all these cases, if the Master reports it scandalous, there the court will order the Master to expunge it with costs paid and received. The Master generally gives full costs, and at the end of the bill 20*l.* &c. which the party may be supposed to have suffered in his reputation by the scandal; and it is discretionary in the Master to allow what he pleases.

As to matters of scandals or impertinencies in any bills, answers or records of the court, they are always referred to a master, and the costs paid on which soever side the report falls.

What are
deemed im-
pertinencies,
so as to sub-
ject the par-
ty to costs.

Impertinencies are, where the records of the court are stuffed with long recitals, digressions of matter of fact, unnecessary and immaterial to the point in question; as where a bill of review is brought, and the party sets forth *in hæc verba* not only the other bill and answer, but the whole proceeding in the case; which being all matters of record, and fair copies of which the party has once paid for, he ought not to pay for them over again: There is no occasion to set them forth *in hæc verba*, or make an unnecessary repetition, for they ought to be concise and short; for where a bill of revivor is grounded on another bill and proceedings, they go no farther than saying, that such a one in or about such a term exhibited his other bill into this honourable court, to be relieved touching certain matters and things therein contained, as by the same bill duly filed and remaining, &c. that witnesses being examined, publication passed, and the cause being at issue came on to be heard such a day, when it was ordered so and so; and there take in the ordering part of the decree very shortly, and no more than what is material

material to the revivor, and the register's recitals are wholly omitted; for when a decree is inrolled, it is never done from the register's recitals, which are very often mistaken.

If any dispute arises, the bill and answer must be read.

This *short* method of drawing a bill of revivor must be observed by the draughtsman, *viz.* that the former proceedings be recited in the shortest manner possible, since they can be of no use to his client; for from the records alone the fact must be determined; if otherwise set forth they are impertinent, and will be expunged with costs. All the defendant has to do, is by answer to set forth, he believes there was such a suit, decree and proceedings, and refers to records; and as it is hard for the suitor to pay costs for this impertinence, who is ignorant of the matter, and it is the fault of the counsel, so it sometimes falls out, that the court will pass a censure on such counsel who signed the pleadings; and precedents may be found, where the court has ordered counsel to pay costs out of his own pocket; which would prevent counsel from stuffing the bills with *tautology* or impertinency: And the same rule ought to be held in exceptions to a report; for some counsel will sign the exceptions, and perhaps most of them are frivolous and vexatious, and they ought for the ease of the court to be discouraged wherever met with; and the court is of necessity to take notice of the counsel who signed the same.

Directions
for drawing
a bill of re-
vivor.

On a bill brought against a corporation to discover writings.——The defendants answer under their common seal, and so, not being sworn, will answer nothing in their own prejudice.

The Modern Practice of the

prejudice. — Ordered that the clerk of the corporation, and such principal members as plaintiff thinks fit, answer on oath; and that the Master settle the oath. *Vide 1 Vern. p. 117.*

Several persons inclosed lands under a custom, another brings eight actions against them. — A bill is brought to stay proceedings at law, and to establish the custom. On issue directed a verdict is found in favour of the custom. — Defendant shall pay costs at law and equity. *Vide Barnard. p. 436.*

An executor bringing in a frivolous bill, ordered to pay costs out of the assets, — if assets denied, to be examined on interrogatories. *Vide Sel. Cas. in Chan. 62.*

If a *feme sole* brings a bill, and then marries, and *Baron and Feme* bring a bill of revivor, and have a decree with costs, they shall have costs for the whole suit, except the bill of revivor. *Vide 1 Vern. p. 318.*

One protected by the *Genoese* ambassador brought a bill in *Chancery*, and was ordered, though after answer put in, to give security to answer the costs in the same manner as if he were a foreigner, because by *stat. 7 Ann. c. 12.* all process against ambassadors and their servants are made void, so that if the bill should be dismissed, no process could issue against him. *Vide Bac. Abr. 87. Eq. Cas. abr. 350. pl. 14. Moseley 175. pl. 89. Bumb. Rep. 183. pl. 258.*

A deposit in money will not be permitted instead thereof. *Vide Bumb. Rep. 35. pl. 53.*

Costs

Costs shall follow the event of an account.
Vide 2 Vol Abr. Eq. p. 237.

If a *subpœna* is not served, no costs are incurred. *Vide Gilbert's History and Practice of Chancery. p. 89.*

AS TO COSTS DYING WITH THE PARTY.

It is a general rule of this court, that where a bill is dismissed with costs, and nothing is done by the decree, but giving the costs, and nothing remains to be done by the death of the party before the costs are taxed, such costs being a personal injury die with the persons, and are lost, and the suit cannot be revived for costs alone. *Vide S. Cases in Chan. p. 54.*

If costs of suit have been taxed, the matter may be revived for the purpose of enforcing the costs, notwithstanding the death of the party against whom the same were decreed by a proceeding against the party's representative. The distinction the court always makes, is, whether there has been a taxation or not, though the right is as certain before taxation as after; or where there are several exceptions thereto, as where the costs are connected with a duty, or where they are directed to issue out of a particular fund, though nothing more is to be done in this case, if the party dies, still costs shall be paid out of that fund. Indeed, wherever the court sees a reasonable foundation for going out of the general rule, they always follow it in order
to

The Modern Practice of the
to answer the justice of the case. *Vide Vezey*,
vol. 2. p. 580, 581.

AS TO SOLICITORS BILLS OF COSTS.

By stat. 2d Geo. 2. cap. 23. sect. 23. He is not to commence his suit for fees, charges, or disbursements, till one month after the delivery of his bill properly signed to his client——

No money to be brought into court on a reference of a solicitor's bill to be taxed by the Master. *Vide Moseley*, p. 68. pl. 40.

On a solicitor's death, his representative need not deliver in the bill as directed by the statute. *Vide Vin. Abr. vol. 3. p. 308. pl. 7.*

A solicitor in a cause may retain papers received of his client, *previous*, but not *subsequent* to his becoming a bankrupt, and he is not liable to come in under the commission. *Vide Vin. Abr. vol. 7. p. 74. pl. 8.*

Country attornies employing agents in town, who employ a clerk in court, the country client not liable to answer his agent's employ, though if he has papers in his hands, he may retain them. *Vide Barn. Chan. Rep. p. 264, 265.*

The same doctrine holds as to fix clerks in Chancery. *Vide Atk. vol. 3. p. 727. pl. 279. Vezey, vol. 2. p. 111. pl. 42.*

Stat. 2. Geo. 2. cap. 23. does not extend to bills of fees, &c. from one solicitor to another.

another, or clerk in court. *Vide Stat. 12 Geo. 2. cap. 13. sect. 6.*

A folicitor decreed his bill out of the profits of a term of years. *Vide Vin. Abr. vol. 4. p. 103. pl. 18.*

— Out of money lodged in the court of Chancery for the benefit of infants. *Vide Moseley, p. 319.*

— Out of a duty decreed before bond creditors. *Vide Atk. vol. 3. p. 720. pl. 269.*

—Out of a fund, whether in suit, lunacy, or bankruptcy. *Vide Vezey, vol. 2. p. 407. pl. 131.*

A solicitor is not obliged to deliver title-deeds of an estate deposited in his hands, till paid his bill of costs. *Vide Moseley, p. 12, 13. Med. Rep. vol. 8. p. 306. R. Raymond, p. 738.*

No injunction can be obtained in this court against a verdict at law, for fees. *Vide Vin. Abr.* vol. 4. p. 103. pl. 20. *Equity Abr.* vol. 2. p. 524. pl. 6.

FEES ALLOWED BY THE MASTER ON TAXING A SOLICITOR'S BILL.

			l.	s.	d.
Drawing all pleadings in a suit, <i>per</i>					
sheet	—	—	o	o	6
Ingrossing <i>per</i> sheet		—	o	o	4
	A a				Copying

The Modern Practice of the

		l.	s.	d.
Copying <i>per</i> sheet	— —	0	0	2
Term-fee	— —	0	6	8
All necessary attendances, each		0	6	8
Warrants before a Master's copy and service, each	—	0	2	0

T A B L E

OF THE

PRINCIPAL MATTERS

CONTAINED IN THE WORK

PART I.

THE OFFICE AND DUTY OF THE

How far the Court is bound to

consider

Officers of the Court

of the Court

The terms and hours of the

Days for hearing motions

The Court

The Court

General directions

proceedings of the Court

When against party

When against judgment

The Appellate Court

and how it is to be used

jurisdiction, and its limits

Form of the writ and the order

with the charge of the Court

Instructions for leaving the process

When

T A

A T A B L E

OF THE PRINCIPAL MATTERS CONTAINED IN THIS WORK.

	<i>Page.</i>
T HE origin and power of the court	1
— On the petty-bag side	<i>ibid.</i>
— On the equity side	2
How far this court interferes with other courts	4
Officers of the court—the nature and power of their respective offices	5
The terms and returns in this court	16
Days for hearing causes, motions, &c. in this court in <i>term</i> and <i>vacation</i> , be- fore the Chancellor and Master of the Rolls	18
General directions for commencing and prosecuting suits in this court	20
When against peers	22
When against members of parliament	<i>ibid.</i>
The <i>subpœna</i> —the effect of this writ, when and how it is to issue, be made re- turnable, and <i>to be filled up</i>	23
Form of the writ and note for the office, with the charge of procuring the same	24
Instructions for serving this process	<i>ibid.</i>
A a 2	When

A T A B L E of the	
When and how to appear on the return of <i>subpœna</i> , according to the Distance of the defendant's residence —	26
How to procure costs, if bill not filed in due time, on return of <i>subpœna</i> —	27
How to enter an appearance with the register, where an <i>attachment</i> has issued against the defendant for want of appearing in due time —	28
Affidavits in this court—the purpose of them, and how to be drawn —	29
Forms of affidavits —	31
How to be ingrossed, used, and filed —	52
Persons under the particular care and pro- tection of this court, from its nature and institution —	53
The nature of bills in equity —	63
The different sorts used in this court —	<i>ibid.</i>
Instructions for drawing a bill, shewing the distinct parts of which it is composed, how to take instructions of the party for the same, and prepare it for the perusal of counsel —	70
Forms of bills — —	72
Directions for ingrossing and filing bill —	167
What an answer is —	181
When to be put in a town-cause, and when in a country cause —	<i>ibid.</i>
Instructions for drawing answer—shewing the distinct parts of which it is compo- sed, and how to draw the same —	185
How to ingross and swear answer —	187
Forms of answers —	<i>ibid.</i>
Exceptions to answer, what they are —	225
When they must be filed —	226
When the defendant must submit or argue exceptions —	227
How to proceed before the Master, when exceptions are referred to him —	228

PRINCIPAL MATTERS.

	Page
How to take out warrants to proceed there- on — —	228
How to proceed when the Master reports in favour of the exceptions	<i>ibid.</i>
Who may except to the master's report, how the same is to be done, and the charges incurred by such procedure	229
Directions for drawing exceptions	230
Form of exceptions — —	231
Pleas in this court—the different kinds, and when and how to be used	235
How to enter pleas for argument	237
The introductory and conclusive part of a plea — —	238
Forms of pleas — —	239
Demurrers, what they are, and when to be used — —	247
The introductory and conclusive part of a plea — —	248
Forms of demurrers — —	249
How to be ingrossed and set down for argu- ment — —	253
How to reply — —	261
When the replication must be filed	<i>ibid.</i>
When bill may be dismissed for want of a replication filed — —	<i>ibid.</i>
When bill may be dismissed, without no- tice given to the adverse party	262
When notice is necessary, before you can dismiss the bill — —	<i>ibid.</i>
Forms of replications — —	<i>ibid.</i>
Directions for ingrossing and filing the same — —	264
How to rejoin — —	271
When in a town or country cause	<i>ibid.</i>
How to bring a cause to a hearing, accord- ing to the modern practice	272

TABLE of the

	Page.
How to obtain a commission to examine witnesses, where the defendant will not rejoin <i>gratis</i> —	272
How to join in commission	273
The necessary qualifications of commissioners between the parties	274
The manner of examining witnesses in a town cause —	<i>ibid.</i>
Directions for drawing, ingrossing and compleating interrogatories for examining witnesses —	277
Forms of interrogatories —	<i>ibid.</i>
The manner of examining witnesses in a country cause by commission	297
How to proceed on such commission	299
How to make up commission to be transmitted to town, when the business is compleated — —	300
The manner of passing publication on the commission being returned	302
Form of commission, notices, &c. on examining witnesses in the country — —	303
How to examine witnesses <i>in perpetuam rei memoriam</i> — —	323
— — — <i>viva voce</i> — —	326
The manner of passing publication in a town cause — —	337
The manner of giving the rules for this business between the respective clerks in court — —	340
Setting down a cause for a hearing	342
The manner the same is entered by the six clerks — —	343
Of the <i>subpœna</i> to hear judgment	344
How to serve this writ —	<i>ibid.</i>
When to be served in a town cause, and when in a country cause	345
	As

PRINCIPAL MATTERS.

	Page
As to hearing a cause before the Chancellor or Master of the Rolls	547
The manner of hearing a cause when both parties appear	348
When the defendant's counsel does not appear at the hearing	349
When a <i>subpœna</i> to shew cause against a decree must be made returnable and when served	<i>ibid.</i>
Asto the dismissal of causes	350
How to obtain costs on a cause being dismissed	351
Of making decrees	<i>ibid.</i>
The manner of drawing up a decree with the register	352
Of inrolling decrees	354
Of executing decrees	355
An account of fees due to the particular officers of this court, <i>per</i> order 28th November 1743, Temp. Lord Hardwicke	356
Masters in Chancery	<i>ibid.</i>
Master's clerk	358
The office of register	360
Of register of affidavits	366
Of examiners	368
The copying clerk's fees	369
The fix clerk's fees	371
The sworn or writing clerk's fees	374
The clerks of the inrollment	382
The deputy clerks	384
The clerk of the hanaper	<i>ibid.</i>
The keeper of the records in the Tower	388
The petty bag office	<i>ibid.</i>
The <i>subpœna</i> office	393
The fix penny writ office	396
The office of chaff-wax	<i>ibid.</i>
The usher of the court	399
The office of purse-bearer	401
	Docquet

A T A B L E of the

	<i>Page</i>
Docquet fees — —	402
The office of principal secretary to the Chancellor — —	403
The office of receiver of the fines —	405
The secretary of decrees and injunctions	406
The secretary of lunatics —	<i>ibid.</i>
The clerk of the custodies of ideots and lunatics — —	407
The serjeant at arms —	408
The messenger of the court	<i>ibid.</i>
The secretary of appeals —	409
The clerk of appeals —	410
The gentleman of the chamber attending the great seal — —	411
The masters extraordinary in the country	412
The usher of the hall at the Chancellor's	4 3
The cryer of the court —	<i>ibid.</i>
The deputy warden of the <i>Fleet</i> , or the Chancellor's tipstaff attending the court — —	414
The door-keeper of the court	415
The keeper of the court —	418
The chief secretary to the Master of the Rolls — —	<i>ibid.</i>
The under secretary to the Master of the Rolls — —	420
The secretary of causes at the Rolls	421
The secretary of decrees and injunctions at the Rolls —	423
The clerk of the chapel at the Rolls	424
The gentlemen of the chamber attending the Master of the Rolls —	425
The usher of the hall at the Rolls	426
The porter at the Rolls —	427

INTER-

PRINCIPAL MATTERS.

INTERLOCUTORY MATTERS.

	<i>Page</i>
Instructions as to applications to the court	
by way of petition —	48
Orders made on petitions not dischargeable	
by petition only —	430
Forms of petitions — —	431
Directions for drawing up the orders on the	
several petitions, and the expence	
thereof — —	468
Applications to the court by motion	470
Form of notice of motion —	471
How and when these notices are to be	
served — —	472
When motions of course may be made	473
How orders on these motions are drawn up,	
passed and entered —	<i>ibid.</i>
References from the court to the Master	474
The manner of drawing up and proceeding	
on an order for a reference to the	
Master — —	<i>ibid.</i>
Form of affidavit of service of three war-	
rants on a reference to the master,	
where neither the defendant, his soli-	
citor or clerk in court attend in order	
to proceed <i>ex parte</i> .	
The manner of under-writing the war-	
rants — —	476
The allowance made by the Master to the	
respective solicitors on these references	477
As to a reference on a matter of mainte-	
nance — —	<i>ibid.</i>
How these warrants are under-wrote	<i>ibid.</i>
The Master's report — —	480
How warrants on the draft report are to be	
under-wrote — —	<i>ibid.</i>
How	

A T A B L E of the

	Page
How warrants on objections to the Master's report are to be under-wrote	480
How to file exceptions to the Master's report, and to set same down for argument	481
Form of exceptions	<i>ibid.</i>
How to move for an order nisi on a Master's report	482
In what time exceptions must be filed to the Master's report	<i>ibid.</i>
How to proceed on the Master's report, when made before hearing	483
How to make the rule absolute for confirming the Master's report	<i>ibid.</i>
Instructions as to the manner of conducting a matter of maintenance before the Master	<i>ibid.</i>
When a report for a maintenance must be filed	484
When reports in general are to be filed	<i>ibid.</i>
What the Master charges for a report before hearing, and what after	<i>ibid.</i>
These reports are never served	<i>ibid.</i>
How to oppose the confirmation of a report	<i>ibid.</i>
Certificates, what they are	486
Of whom they are to be had, and for what purposes	487
A certificate of a matter where costs are incurred—how the same are enforced by process	<i>ibid.</i>
Forms of certificates	489
Orders of court—what they are	492
How to be pronounced and drawn up	493
Orders are of two sorts—common and special—what constitutes the distinction	<i>ibid.</i>
The charge of drawing up the common and special order	<i>ibid.</i>
Orders, when entered, cannot be altered without leave of court	494
How	

PRINCIPAL MATTERS.

	Page
How to confirm orders nisi	494
The manner of serving orders of court	<i>ibid.</i>
Paying and receiving money into court— how regulated	496
How to procure money paid into the bank to the credit of a cause	<i>ibid.</i>
Accomptant-General and clerks take no fees for business done by them for the solicitors of the court	497
How to procure money due to infants when they come of age, which has been paid by the court into the Bank	<i>ibid.</i>
Form of certificate	498
Form of affidavit to support the same	<i>ibid.</i>
How these certificates must be procured	499
Injunctions to stay suit, &c. what it is	<i>ibid.</i>
The various purposes for which this writ may be obtained	<i>ibid.</i>
How these writs are obtained, and for what	500
How to be obtained in vacation	501
The consequence of not obeying this writ	<i>ibid.</i>
The effect this writ has on a suit at law when brought to stay the proceed- ings	<i>ibid.</i>
When and how the defendant must dissolve the injunction	502
Exceptions to an answer, without the Ma- ster's report of it's insufficiency, is not a sufficient cause to apply for an in- junction	504
How to serve the writ of injunction	505
How to procure an attachment and proceed thereon against a person who disobeys the writ	<i>ibid.</i>
How to set aside an injunction, where the same is irregularly obtained	506
Process of contempt—what it is	510
An attachment	511
How this writ must be directed	513
What	

A T A B L E of the, &c.

P a g e

The effect of a <i>caption</i> on an attachment	— —	514
An attachment, when duly obtained, can't be discharged without payment of costs	— —	<i>ibid.</i>
Corporations cannot be attached—a <i>disfringas</i> must issue against them	— —	<i>ibid.</i>
The sheriff is the proper officer to execute all process of this court; but, when incapacitated, it must be directed to the coroner	— —	515
A <i>disfringas</i> —how this writ must be tested and returned, and how executed by the sheriff	— —	<i>ibid.</i>
A commission of rebellion—how this writ must be directed, and how executed	— —	517
A serjeant at arms—his power arises from an order of the court, which is drawn up by the register	— —	519
A sequestration—what it is	— —	520
Agreement between parties made a rule of court	— —	522
Of costs—the general rule thereon, as between parties	— —	<i>ibid.</i>
What are deemed impertinencies, so as to subject the parties to costs	— —	524
Directions for drawing a bill of revivor	— —	525
As to costs dying with the party	— —	527
As to solicitors bills of costs	— —	528
Fees allowed by the Master on taxing a solicitor's bill	— —	529

F I N I S.

FR

MVSEVM
BRITANNICVM



